1997

SENATE COMMERCE COMMITTEE

MINUTES

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

SENATE: COMMERCE

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — SENATE: COMMERCE — Valid Through 2-SEP-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 29	BAKER	INCREASE RAFFLE LIMITS	*R -CH. SL 97-0010	03-03-97	03-12-97
H 95	IVES	BUILDING CODE CHANGES	*R -CH. SL 97-0026	03-20-97	04-01-97
H 114=	CULPEPPER	REPEAL UCC BULK TRANSFERS	S -RE-REF COM ON COMMERCE	04-09-97	05-20-97
H 114=	CULPEPPER	REPEAL UCC BULK TRANSFERS	S -RE-REF COM ON COMMERCE	06-11-97	
H 134=	CULPEPPER	INVESTMENT SECURITIES UCC REWRITE	R -CH. SL 97-0181	03-11-97	06-03-97
H 160=	MCCOMAS	PORT USER ON PORTS BOARD	*S -REF TO COM ON COMMERCE	04-10-97	
H 400	TALLENT	BANK ASSESSMENTS	*R -CH. SL 97-0285	04-28-97	05-13-97
H 407=	BADDOUR	UNIFORM FRAUDULENT TRANSFER ACT	*R -CH. SL 97-0291	04-10-97	06-11-97
H 408	IVES	PLUMBING/HEATING CONTRACTORS	*R -CH. SL 97-0382	05-21-97	06-26-97
H 414=	BERRY	UNEMPL. BENEFITS/SEVERANCE PAY	*R -CH. SL 97-0120	05-06-97	05-20-97
H 470=	TALLENT	MEDICAL INVESTIGATORS	*S -RE-REF COM ON COMMERCE	05-07-97	
H 482	CULP	HANDICAPPED PERSONS SIGNATURE	R -CH. SL 97-0208	04-01-97	06-03-97
H 485	DOCKHAM	FUNERAL ESTABLISHMENTS	*R -CH. SL 97-0399	05-06-97	06-03-97
H 499	THOMPSON	GIS RECORD EXCEPTION	*R -CH. SL 97-0193	05-06-97	05-29-97
H 617	SHERRILL	NO COMPETITION BY SCHOOL BUS	*R -CH. SL 97-0315	05-06-97	07-08-97
H 672	**HALL**	**FORESTRY BLDG PRIVATIZATION PROJECT**	***S -RE-REF COM ON APPROPR**	**05-06-97**	**07-09-97**
H 739=	DICKSON	MV DEALERS/MANUFACTURERS LIC. LAW	*R -CH. SL 97-0319	05-06-97	06-25-97
H 790	MICHAUX	NO RACE OR GENDER ON CHECKS	*R -CH. SL 97-0149	04-29-97	05-14-97
H 794=	IVES	ENGINEERING & LAND SURVEYING CHANGES	*S -REF TO COM ON COMMERCE	08-11-97	
H 871	BERRY	WAGE & HOUR AMENDMENTS	R -CH. SL 97-0146	05-06-97	05-27-97
H 899	HOWARD	RESIDENTIAL PROP. DISCLOSURE ACT	*H -PRES. TO GOV. 08-22	04-29-97	08-13-97
H 940	REDWINE	WORKER'S COMP/REALTOR STATUS	S -REF TO COM ON COMMERCE	05-06-97	
H 994	WILSON G	COMPETITIVE PAY TELEPHONE	R -CH. SL 97-0207	05-06-97	06-03-97
H 997	NEELY	NOTARY COMMISSION AMENDMENT	*S -RE-REF COM ON COMMERCE	06-24-97	
H1006	DAVIS D	STATE CAPITAL IMPROVEMENTS PROJECTS	R -CH. SL 97-0314	05-06-97	07-08-97
H1033	CHURCH	ESTABLISHMENT OF BANK BRANCHES	*R -CH. SL 97-0054	05-05-97	05-06-97
H1059	WRIGHT	CAMA/URBAN WATERFRONT REDEVELOP	*R -CH. SL 97-0337	06-19-97	07-08-97
H1074	HALL	REPRESENTATIONS TO CONSOLIDATE DEBTS	S -REF TO COM ON COMMERCE	05-06-97	
H1075	HALL	APPRECIATION OF REVERSE MORTGAGES	*S -RE-REF COM ON COMMERCE	05-06-97	08-07-97
H1075	HALL	APPRECIATION OF REVERSE MORTGAGES	*S -RE-REF COM ON COMMERCE	08-14-97	

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NORTH CAROLINA GENERAL ASSEMBLY

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1997-98 Regular Session — SENATE: COMMERCE — Valid Through 2-SEP-1997

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H1108	MCMAHAN	BREW ON PREMISES	*H -PRES. TO GOV. 08-22	07-17-97	07-24-97
S 23	REEVES	REQUIRE RENTAL PROPERTY HEAT	*H -CAL PURSUANT RULE 36(A)	02-03-97	03-18-97
S 31=	JORDAN	AMEND LP GAS CODE	*S -RE-REF COM ON COMMERCE	02-03-97	03-12-97
S 31=	JORDAN	AMEND LP GAS CODE	*S -RE-REF COM ON COMMERCE	03-17-97	
S 96	KERR	PAWNSHOP RECORDS ACCESS	H -REF TO COM ON COMM	02-12-97	03-25-97
S 107	COOPER	CONFIRM WILLIAM R. PITTMAN	H -CAL PURSUANT RULE 36(A)	02-13-97	03-04-97
S 133=	ODOM	PINEVILLE TELEPHONE SYSTEM	S -REF TO COM ON COMMERCE	02-17-97	
S 141=	RAND	STATE CONTRACT EXEMPTIONS	*R -CH. SL 97-0331	02-17-97	02-26-97
S 141=	RAND	STATE CONTRACT EXEMPTIONS	*R -CH. SL 97-0331	03-11-97	03-25-97
S 142=	RAND	PORT USER ON PORTS BOARD	*R -CH. SL 97-0235	02-17-97	02-25-97
S 153=	ODOM	SCRAP TIRE DISPOSAL TAX AMEND.	*R -CH. SL 97-0209	02-17-97	03-04-97
S 157=	HARTSELL	CORPORATE AMENDMENTS	*S -PRES. TO GOV. 08-27	02-17-97	02-25-97
S 158=	**HARTSELL**	**ADMINISTRATIVE DISSOLUTION/REPORT**	***S -RE-REF COM ON APPROPR**	**02-17-97**	**03-04-97**
S 163	HARTSELL	SECURITIES TRANSFER ON DEATH	S -RE-REF COM ON FINANCE	02-17-97	03-04-97
S 208=	FOXX	LODGING ESTABLISHMENTS/SANITATION	*R -CH. SL 97-0367	02-20-97	04-01-97
S 233	REEVES	EXPAND DEBT COLLECTION ACT	S -REF TO COM ON COMMERCE	02-24-97	
S 246=	RAND	GOVT. USE/SEIZED GUN PARTS	H -REF TO COM ON JUDICI	02-26-97	03-18-97
S 253	WINNER	TELEPHONE CONSUMER PROTECTION	*S -PRES. TO GOV. 08-26	02-27-97	04-08-97
S 295	MCDANIEL	GREYHOUND RACING PROHIBITED	S -REF TO COM ON COMMERCE	03-04-97	
S 312	JORDAN	REGULATE CHECK CASHING	*R -CH. SL 97-0391	03-05-97	04-02-97
S 318	REEVES	SECURITIES ACT AMENDMENTS	S -REF TO COM ON COMMERCE	03-06-97	
S 329	DALTON	SAVINGS BANK NAME	*R -CH. SL 97-0241	03-10-97	03-18-97
S 330	DALTON	SAFE-DEPOSIT BOXES	*R -CH. SL 97-0311	03-10-97	03-26-97
S 333	DALTON	COMMODITIES ACT AMENDMENT	*H -CAL PURSUANT RULE 36(A)	03-10-97	03-19-97
S 361	COOPER	EXPAND INFORMATION HIGHWAY USES	*H -REF TO COM ON TECHNOL	03-11-97	04-30-97
S 379	EAST	SOLID WASTE OPERATOR COURSE EXEMPT	*H -REF TO COM ON ENVIRON	03-12-97	05-20-97
S 382	WINNER	REDEFINE UNEMPL. BASE PERIOD-2	*R -CH. SL 97-0404	03-12-97	04-22-97
S 408=	SHAW R	RENEWABLE RESOURCE ENERGY	S -REF TO COM ON COMMERCE	03-18-97	
S 417	SHAW L	HIGHWAY CONTRACT BONDING REQ'MENTS	*H -RE-REF COM ON JUDICI	03-18-97	04-29-97
S 418	SHAW L	SMALL BUSINESS PROCUREMENT ACT	*H -REF TO COM ON COMM	03-18-97	04-01-97

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S 425	MILLER B	REFRIGERATION CONTRACTORS	H -RE-REF COM ON FINANCE	03-19-97	03-27-97
S 438	REEVES	SECURITIES/INVESTMENT AVD. ENF.	*S -PRES. TO GOV. 08-22	03-20-97	04-08-97
S 439=	REEVES	SECURITIES/INVESTMENT ADVISERS	*R -CH. SL 97-0419	03-20-97	04-10-97
S 465	SHAW L	NCDOT ENGINEERING/DESIGN CONTRACTS	R -CH. SL 97-0196	03-24-97	04-17-97
S 485=	LUCAS	MEDICAL INVESTIGATORS	S -RE-REF COM ON COMMERCE	04-30-97	
S 527	JORDAN	INCREASE STATE MINIMUM WAGE	S -REF TO COM ON COMMERCE	03-26-97	
S 539	MILLER B	LOBBYIST DISCLOSURE	*H -RE-REF COM ON ETHICS	03-27-97	04-23-97
S 550=	ALBERTSON	IRRIGATION SYST. DESIGN	*S -PRES. TO GOV. 08-29	03-27-97	04-15-97
S 562	WARREN	INCREASE FEES FOR RETURNED CHECKS	*R -CH. SL 97-0334	04-01-97	04-15-97
S 563	REEVES	AMEND HOUSING AUTHORITIES LAWS	S -REF TO COM ON COMMERCE	04-01-97	
S 564	REEVES	AMEND FINANCIAL PRIVACY ACT	*H -RE-REF COM ON RULES	04-01-97	04-30-97
S 565	REEVES	VARIABLE RATE LOANS	*H -CONF COM APPOINTED	04-01-97	04-30-97
S 568	JENKINS	MFG. HOME OWNER'S BILL OF RIGHTS	S -REF TO COM ON COMMERCE	04-01-97	
S 574=	GULLEY W	REQUIRE WORK BREAKS	S -REF TO COM ON COMMERCE	04-01-97	
S 575=	HOYLE	MV DEALERS/MANUFACTURERS LIC. LAW	S -REF TO COM ON COMMERCE	04-01-97	
S 577	REEVES	INSURANCE PREMIUM FINANCING	*H -REF TO COM ON INS	04-01-97	04-30-97
S 592	**SOLES**	**RELOCATE ABANDONED CEMETERIES**	***S -RE-REF COM ON APPROPR**	**07-09-97**	**07-17-97**
S 597	LEE	PROFESSIONAL COUNSELORS	R -CH. SL 97-0421	04-01-97	04-10-97
S 629=	WELLONS	EXPEDITE JOHNSTON SCHOOL CONSTR.	*S -RE-REF COM ON FINANCE	04-01-97	04-22-97
S 646=	RUCHO	OFFICIAL STATE DANCE	*S -RE-REF COM ON COMMERCE	04-02-97	04-22-97
S 646=	RUCHO	OFFICIAL STATE DANCE	*S -RE-REF COM ON COMMERCE	04-23-97	
S 710=	SOLES	LELAND/BELVILLE ANNEX RESTRICTIONS	S -RE-REF COM ON COMMERCE	04-28-97	
S 740	RAND	GARNISHMENT TO SATISFY JUDGMENTS	*S -RE-REF COM ON RULES &	04-07-97	05-01-97
S 777	LEE	INTEREST RATES/LOAN CEILINGS STUDY	*S -RE-REF COM ON RULES &	04-09-97	04-30-97
S 787=	LEDBETTER	ENGINERING & LAND SURVEY CHANGES	S -REF TO COM ON COMMERCE	04-10-97	
S 801	WELLONS	N.C. PLANNED COMMUNITY ACT	H -REF TO COM ON COMM	04-10-97	04-17-97
S 808=	KINCAID	PROHIBIT ATM SURCHARGE	S -REF TO COM ON COMMERCE	04-10-97	
S 809=	LEDBETTER	AMEND NC APPRAISERS ACT	*H -RE-REF COM ON RULES	04-10-97	04-23-97
S 814	ODOM	IN-STAND ABC SALES	*R -CH. SL 97-0167	04-14-97	04-22-97
S 818=	**SHAW L**	**DOWNTOWN LOAN GUARANTEE FUND**	**S -REF TO COM ON COMMERCE**	**04-14-97**	

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S 819=	SHAW L	DOWNTOWN DATABASE	*H -REF TO COM ON COMM	04-14-97	04-30-97
S 821=	SHAW L	HOUSING TRUST FUND/DOWNTOWNS	H -REF TO COM ON COMM	04-14-97	05-01-97
S 824=	SHAW L	BUILDING CODE COUNCIL MEMBERSHIP	H -REF TO COM ON COMM	04-14-97	04-30-97
S 837	BALLANCE	SPORTS CLUB ABC PERMITS	*H -RE-REF COM ON RULES	04-14-97	04-22-97
S 838	BALLANCE	TOURISM RESORT ABC PERMITS	*H -RE-REF COM ON RULES	04-14-97	04-22-97
S 846	ODOM	RETAILERS DISPOSE OF CERTAIN GOODS	S -REF TO COM ON COMMERCE	04-15-97	
S 848	DALTON	MUNICIPAL ELECTRIC AMENDMENTS	*R -CH. SL 97-0346	04-15-97	04-24-97
S 860	LEE	STUDY PRISON ENTERPRISES	*S -RE-REF COM ON RULES &	04-15-97	05-01-97
S 863	RAND	AREA CODES/NATIONAL SECURITY	S -REF TO COM ON COMMERCE	04-15-97	
S 866=	RAND	PRESCRIPTION DRUGS/COMPETITION	*H -RE-REF COM ON INS-HLTH	04-15-97	04-29-97
S 869	RAND	TRANSFER TECHNOLOGY FUNCTIONS	*R -CH. SL 97-0148	04-15-97	04-29-97
S 891	DALTON	LOCAL GOVERNMENT CONTRACTING	*R -CH. SL 97-0174	05-15-97	
S 892	SOLES	DISSENTERS' RIGHTS	*R -CH. SL 97-0202	04-16-97	04-30-97
S 914	KERR	WORKERS' COMP. HOSPITAL CHANGES	*R -CH. SL 97-0145	04-17-97	04-24-97
S 919	ODOM	UNLAWFUL TELECOMMUNICATIONS	*R -CH. SL 97-0372	04-17-97	04-29-97
S 930	MARTIN R	ABOLISH BURIAL COMMISSION	*R -CH. SL 97-0313	04-17-97	04-29-97
S 932	PERDUE	STRENGTHEN MANAGED CARE REGULATION	*S -PRES. TO GOV. 08-29	04-17-97	06-18-97
S 933	PERDUE	HEALTH INS/COVERAGE&NETWKS	*H -REF TO COM ON RULES	04-17-97	06-18-97
S 934	PERDUE	PREFERRED PROVIDER AMENDMENTS	*H -REF TO COM ON RULES	04-17-97	06-18-97
S 935	PERDUE	MANAGED CARE/UTILIZ. & GRIEVANCE	*H -REF TO COM ON RULES	06-03-97	06-18-97
S 945	RAND	PRECRIPTION REFILL SAFETY ACT	*R -CH. SL 97-0076	04-17-97	04-22-97
S 953	WEBSTER	CORPORATE REINSTATEMENT	R -CH. SL 97-0200	04-17-97	04-30-97
S 966	MILLER B	NO DAMAGE FOR DELAY UNENFORCEABLE	*H -REF TO COM ON RULES	04-17-97	04-24-97
S 972	**WINNER**	**MANAGED CARE POLICY BOARD**	**S -RE-REF COM ON RULES &**	**04-21-97**	**05-07-97**
S 973	WINNER	HMO INFO	*S -PRES. TO GOV. 08-26	04-21-97	04-30-97
S 986	MARTIN R	WORKFORCE DEVELOPMENT CONSOLIDATION	S -REF TO COM ON COMMERCE	04-21-97	
S 990	BALLANCE	MEDICAL RECORDS/DISABILITY	S -REF TO COM ON COMMERCE	04-21-97	
S 992	CONDER	NC BOXING COMMISSION	*S -PRES. TO GOV. 08-29	04-21-97	04-24-97
S 994	RAND	NO DIRECT ABC SHIPMENTS-CONSUMERS	*R -CH. SL 97-0348	04-21-97	04-28-97
S 996	WARREN	PLUMBING LICENSE EXEMPTION	*R -CH. SL 97-0298	04-21-97	04-24-97

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S1008	HOYLE	INSULATING SPECIALTY CONTRACTORS	S -RE-REF COM ON FINANCE	04-21-97	04-29-97
S1013	GULLEY W	ENCOURAGE RENEWABLE ENERGY	S -RE-REF COM ON RULES &	04-28-97	05-01-97
S1027	MILLER B	AMEND VOLTAGE SAFETY ACT	*H -REF TO COM ON RULES	04-21-97	04-29-97
S1044	DALTON	PRIVATE PERSONNEL SERVICES FEES	S -RE-REF COM ON COMMERCE	04-21-97	04-29-97
S1044	DALTON	PRIVATE PERSONNEL SERVICES FEES	S -RE-REF COM ON COMMERCE	06-11-97	
S1078	SOLES	CONFIRM UTIL. COMM'N MEMBERS	*R -CH. RES 97-19	05-12-97	05-13-97
S1088	BLUST	CORPORATE CONVERSIONS	S -REF TO COM ON COMMERCE	07-24-97	

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SENATE COMMERCE COMMITTEE
MEMBERSHIP

MEMBER	ROOM NO.	TELEPHONE NO.
Sen. R. C. Soles, Chm.	2022	3-5963
Sen. Betsy Cochrane, V-C	1127	5-2525
Sen. David Hoyle, V-C	300A	3-5734
Sen. R. L. Martin, V-C	410	5-3040
Sen. Ed Warren, V-C	623	3-5953
Sen. Patrick Ballentine, RMM*	519	3-5856
Sen. Frank Ballance	523	5-3032
Sen. Robert Carpenter	517	3-5875
Sen. Walter Dalton	2113	3-5880
Sen. James Forrester	1121	3-5708
Sen. Fletcher Hartsell	518	3-7223
Sen. Luther Jordan, Jr	407	5-3034
Sen. John Kerr III	526	3-5621
Sen. Jesse Ledbetter	520	3-5748
Sen. Howard Lee	406	5-3030
Sen. Aaron W. Plyer	627	3-5739
Sen. William Purcell**	2117	5-0690
Sen. Anthony E. Rand	300C	3-9892
Sen. Eric Reeves	2111	3-3460
Sen. Bob Shaw	1129	5-3050
Sen. Larry Shaw	625	3-4809

Staff Attorneys:

Mr. Linwood Jones (Mfg. & Labor Issues)	3-2578
Mr. Walker Reagan (Economic Dev.)	3-2578
Ms. Karen C. Brown (Financial Institutions)	3-2578
Mr. Steve Rose (Public Utilities)	3-2578

Committee Clerks:

Mrs. Janet Blalock	3-5963
Mrs. Joan Leatherman	3-5963

* Replaced Senator Kincaid as RMM

**Replaced Senator Conder

SENATE COMMERCE COMMITTEE

SUBCOMMITTEES

SENATE BILL 233 - SCOPE/ACTS OF DEBT COLLECTORS (Sen. Reeves)

Senator Lee, Chairman
Senator Ballentine
Senator Dalton

SENATE BILL 382 - REDEFINE UNEMP. INS. BASE PERIOD. (Sen. Winner)

Senator Dalton, Chairman
Senator Ballantine
Senator Hartsell
Senator Hoyle
Senator R. L. Martin
Senator Eric Reeves

SENATE BILL 408 - RENEWABLE RESOURCE ENERGY (Sen. R. Shaw)

Senator Rand, Chairman
Senator Ballentine
Senator Hoyle
Senator R. Shaw

SENATE BILL 527 - INCREASE STATE MINIMUM WAGE (Sen. Jordan)

Senator Ballance, Chairman
Senator Jordan
Senator Ledbetter
Senator Reeves
Senator Rand

SENATE BILL 564 - AMEND FINANCIAL PRIVACY ACT

Senator Warren, Chairman
Senator Ballance
Senator Lee

SENATE BILL 777 - ADJ INTEREST RATES & LOAN CEILINGS (Sen. Lee)

Senator Warren, Chairman
Senator Ballance
Senator Cochrane
Senator Forrester
Senator Plyler
Senator Rand

HOUSE BLL 407 - UNIFORM FRAUDULENT TRANSFER ACT (Rep. Baddour)

Senator Dalton, Chairman
Senator Ballance
Senator Cochrane
Senator Rand

HOUSE BILL 672 - COUNTY CONSTRUCTION ON METAL BLDGS. (Hall)

Senator Warren, Chairman
Senator Ballance
Senator Kerr
Senator Kincaid

C. S. for HB 899 - RESIDENTIAL PROP. DISCLOSURE ACT. (Rep. Howard)

Senator Warren, Chm.
Senator Dalton
Senator Lee
Senator Ledbetter
Senator Shaw

HOUSE BILL 1074 - REPRESENTATION TO CONSOLIDATE DEBTS (Hall)

Senator Lee, Chairman
Senator Dalton
Senator Hartsell

HB 1075, APPRECIATION OF REVERSE MORTGAGES (Hall)

Senator Lee, Chm.
Senator Dalton
Senator Kerr
Senator Ledbetter

HB 940, WORKER'S COMPENSATION/REALTOR STATUS (Redwine)

Senator Ballance, Chairman
Senator Hartsell
Senator Kerr

MINUTES

SENATE COMMERCE COMMITTEE

February 18, 1997

The first meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, February 18, 1997. Nineteen member of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator Soles, Chairman, called the meeting to order and asked each member to introduce themselves stating the area of the State which they represent and also to give a brief statement concerning their business background. Senator Soles then introduced the staff attorneys who will be working with the Committee and the areas of their expertise. They are: Mr. Linwood Jones (Mfg. And Labor Issues), Mr. Walker Reagan (Economic Development), Ms. Karen C. Brown (Financial Institutions) and Mr. Steve Rose (Public Utilities).

Secretary E. Norris Tolson, North Carolina Department of Commerce, was recognized by Senator Soles to address the Committee. Mr. Tolson who was recently appointed to the position of Secretary gave the Committee a brief overview of the Department and what it is about along with some plans he has for the future. (See attached handout which outlines the duties of the various divisions within the Department.).

The second speaker was Mr. Paul G. Butler, Jr., Director of the Southeastern North Carolina Regional Economic Development Commission. Mr. Butler described some of the things the Commission has been involved in in its efforts to bring economic benefit to the eleven counties in the region. He said he was excited about the fact that they had been able to raise some private funds to further their efforts, and thanked the Legislature for their vision in establishing the regional commissions.

The final speaker was Mr. Jim Sughrue, Vice President for Communications, N. C. Global Transpark Authority. Mr. Sughrue reviewed the history of the Authority and the progress that has been made during the past few years. He said the Environmental Impact Study would be completed by the end of the summer and they would then be in a position to receive federal funding to go forward with the development of the air field and other aspects of the Park.

Following a question and answer period of all speakers Senator Soles adjourned the meeting at 12:00 Noon.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

AGENDA
SENATE COMMERCE COMMITTEE
FEBRUARY 18, 1997
ROOM 1027
STATE LEGISLATIVE BUILDING

OPENING REMARKS:

Senator R. C. Soles, Jr.
Chairman

PRESENTERS:

Secretary E. Norris Tolson
N. C. Department of Commerce

Director Paul G. Butler, Jr.
Southeastern North Carolina Regional Economic Development Commission

Mr. Jim Sughrue
Vice-President for Communications
N. C. Global Transpark Authority

North Carolina Department of Commerce

The Department of Commerce is the state's lead agency for economic and community development. The department promotes a wide variety of opportunities to improve the economy of the entire Tar Heel State, rural and urban areas alike. Promoting tourism, exporting, film production, downtown revitalization and industry recruitment are some of the areas for which the Commerce Department is responsible. The department's goal is to create new jobs and more diverse employment opportunities for all North Carolinians.

Business/Industry Development Division: This division leads North Carolina's business and industrial recruitment efforts. Based in Raleigh, its staff works closely with other public and private development organizations to attract new industries to the state. In addition, the division's retention and expansion program -- designed to encourage existing North Carolina companies to stay and grow here -- operates out of nine regional offices to ensure better service and equal access to companies throughout the state.

Division of Community Assistance: This division has a threefold mission. First, it administers the federally funded Small Cities Community Development Block Grant program, which assists low- and moderate-income North Carolinians through the creation of jobs, housing and improved infrastructure. CDBGs are awarded to local governments on a competitive basis. The division also administers the state's Main Street program, which helps communities revitalize their downtown areas. Finally, planners in the division's seven regional offices assist local governments with other planning needs, such as annexations and zoning regulations.

Division of Employment and Training: This division administers North Carolina's share of federal Job Training Partnership Act funds. Economically disadvantaged people, people laid off from work, and people with serious barriers to employment are trained for jobs, or retrained for a different kind of job, through JTPA programs. Also designated as the state's Dislocated Worker Unit, this division receives notice of all plant closings and mass layoffs in the state to ensure timely assistance to affected workers.

Energy Division: This division is the state's official source for energy planning and management, energy information and energy technical assistance. The division's key responsibilities include promoting renewable energy and energy efficiency in every sector of the economy, preparing energy forecasts and updating and developing North Carolina's energy emergency plans.

Film Office: The Film Office promotes North Carolina as a site for motion picture, television and commercial production. The Film Office staff works closely with film producers and others to keep movie making in North Carolina practical, pleasant and profitable.

Finance Center: To help businesses that want to locate or expand operations in the Tar Heel State, the Commerce Finance Center administers a variety of economic development financing programs: the Industrial Building Renovation Fund, the Basic Building Fund and the Community Development Block Grant program for economic development projects. The agency also administers Industrial Revenue Bonds and the William S. Lee Quality Jobs and Business Expansion Act. This Act provides tax credits to companies that invest in jobs, equipment, research and development and worker training.

International Trade Division: Responsible for the state's foreign trade activities, this division's primary goal is to help small and mid-sized firms market their products overseas through its Export Outreach Program, Trade Events Program and the Shared Foreign Sales Corporation Program.

Sports Development Office: The Sports Development Office works with local groups, other state agencies and sports organizations to attract amateur and professional sporting events to North Carolina.

Division of Travel and Tourism: The Division of Travel and Tourism promotes North Carolina as a vacation destination to travelers worldwide in an effort to increase travel expenditures, create additional employment and strengthen the overall economy of the state.

North Carolina Department of Commerce
301 N. Wilmington St.
Raleigh, North Carolina 27626
(919) 733-4962 Fax: (919) 733-8356

VISITOR REGISTRATION SHEET

Commerce — 2/18/97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
N Folsom	Commerce
Bill King	Commerce
Gary Carlton	Commerce
Tuck Wells	Commerce
Leo Tilley	"
Angie Harkins	"
Ruffin Bailey	NCCBA
Claire Gibbons	Governor's Office
[illegible]	"
Edward Cagle	Commerce
SSMN PERRY C/C	Commerce
Stuart Dixon	N.C. National Bank Corp.
David Hanks	Ridgetop Associates

VISITOR REGISTRATION SHEET

Commerce — 2-18-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JIM SUGHRUE	N.C. GLOBAL TRANSPARK AUTH.
Gordon Allen	NC Bankers Assn.
Paul Stock	NC Bankers Assn.
Lou Everhart	NC Citizen Action
Rob Schofield	Justice Ctr.
Jean M Killian	Waynesville, NC
Michael A Shipman	North Carolina Power
Mary Bradley	NCCBA
Lyman Cooper	C.S.X. Corp
Lynn Holmes	Bell South
Peter Keber	Nations Bank
Jerry Roberts	C.U.C.A

VISITOR REGISTRATION SHEET

Commerce — Name of Committee

2-18-97 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Chris Wagoner	NC Bankers
Ken Wright	BCBSNC
Bill Pittman	Utility Comm
RB	NCAB
Marc King	SBTDC
Scott Daugherty	SBTDC
Fabrice Pearlen	NCACC
John McMillan	Manning Fulton & Skinner
Mac Mannheimer	Poyner & Spruill
Dick Taylor	NCAIA
[illegible]	NC AFL-CIO
Alan Hanks	Bailey & Dixon

VISITOR REGISTRATION SHEET

Commerce
Name of Committee

2-18-97
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ralph D. Trott	CSC Franklin St.
BRAD CROWE	611 Hinsdale ST Raleigh NC 27605
Ed Brandt	Asheville Citizen-Times
Susan Valaoras	Nationwide
[signature]	Nationwide

MINUTES
SENATE COMMERCE COMMITTEE
February 25, 1997

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, February 25, 1997. Nineteen members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator Soles called the meeting to order.

The following bills were considered by the Committee:

S. B. 141, AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE STATE PORTS COMMISSION TO EXEMPT THE STATE PORTS AUTHORITY FROM STATE PURCHASE AND CONTRACT REQUIREMENTS.

Senator Rand was recognized to explain the bill. He offered a Committee Substitute for the bill, a copy of which is attached. He said that the bill came out of a recommendation of the Ports Study Commission, and he felt it would enable our Ports to be more competitive with Charleston and other ports around the country.

Speaking in opposition to the bill were Mr. Ed Little, Chief of Purchasing, Purchase and Contract Division, and Mr. Speros Flagas from the State Construction Office. A copy of a memorandum from the Department of Administration is attached which enumerates the concerns of that Department.

Mr. Tommy Green, Chief Financial Officer of the State Ports Authority, Mr. Dennis Myers, attorney from the Attorney General's Office who is Counsel to the State Ports, and Mr. Jack Tilley, Chairman of the Ports Advisory Council, spoke in support of the legislation.

After questions from the Committee, Senator Rand offered an amendment (Copy attached.) which added a sunset provision to the bill. Senator Rand then moved the adoption of the Committee Substitute for Senate Bill 141, as amended. Motion carried.

S.B. 142, AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE STATE PORTS STUDY COMMISSION TO PROVIDE THAT AT LEAST ONE MEMBER OF THE BOARD OF THE NORTH CAROLINA STATE PORTS AUTHORITY BE AFFILIATED WITH A MAJOR EXPORTER OR IMPORTER USING THE STATE PORTS.

Senator Rand was recognized to explain the bill. He said the bill requires that one appointment to the State Ports Authority made by the Governor be a person affiliated with a major exporter or importer currently using the State Ports. Senator Kincaid moved that Senate Bill 142 be given a favorable report. Motion carried.

S.B. 157, AN ACT TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Senator Hartsell, the bill sponsor, was recognized. He, in turn, asked Mrs. Doris Bray, a member of the General Statutes Commission, to explain the bill. See attached copy of a memorandum dated February 24, 1997, for a summary of her remarks.

Senator Rand moved that Senate Bill 157 be given a favorable report but that it be re-referred to the Committee on Finance. Motion carried.

Senator Soles introduced Secretary of State Elaine Marshall who was in the audience and asked if she had comments on the bill. She said she had none in that Mrs. Bray had done such an excellent job of explaining it.

There being no further business, the meeting adjourned at 12:05 p.m.

Senator R. C. Soles, Jr., ~~Chairman~~

Mrs. Joan R. Leatherman
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, February 25, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **142** Port User on Ports Board.
Sequential Referral: None
Recommended Referral: None

S.B. **157** Corporate Amendments
Sequential Referral: None
Recommended Referral: Finance

TOTAL REPORTED: 2

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, February 26, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **141** Exempt State Ports Purchase & Contract

Draft Number:	S141-PCSA551
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 141
Proposed Committee Substitute S141-PCSA551

Short Title: Exempt State Ports Purchase & Contract. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE STATE PORTS COMMISSION TO EXEMPT THE STATE PORTS AUTHORITY FROM STATE PURCHASE AND CONTRACT REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G. S. 143B-465 reads as rewritten:

"**§ 143B-465. Purchase of supplies, material and equipment and building contracts.**

~~All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority. All of the provisions of Chapter 143 of the General Statutes relating to public building contracts are hereby made applicable to the North Carolina State Ports Authority for those construction projects which may be funded, in whole or in part, by appropriations from the General Assembly.~~

The following general laws, to the extent provided below, do not apply to the North Carolina State Ports Authority:

(1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts for supplies, materials, equipment and contractual services of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.

(2) Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.

(3) G.S. 143-341(3) shall not apply to the plans and specifications for construction or renovation authorized by the North Carolina State Ports Authority.

Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regards to matters governed by Articles 3 and 8 of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any purchases or building contracts exceeding two hundred fifty thousand dollars ($250,000) to which this exemption is applied."

Section 2. This act is effective when it becomes law, and shall expire July 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 141

Short Title: Exempt State Ports Purchase & Contract. (Public)

Sponsors: Senators Rand; Hoyle and Perdue.

Referred to: Commerce.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE STATE PORTS STUDY COMMISSION TO EXEMPT THE STATE PORTS AUTHORITY FROM STATE PURCHASE AND CONTRACT REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G. S. 143B-465 reads as rewritten:

"**§ 143B-465. Purchase of supplies, material and equipment and building contracts.**

~~All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority. All of the provisions of Chapter 143 of the General Statutes relating to public building contracts are hereby made applicable to the North Carolina State Ports Authority for those construction projects which may be funded, in whole or in part, by appropriations from the General Assembly.~~

The North Carolina State Ports Authority is exempt from the provisions of Article 3 and Article 8 of Chapter 143 of the General Statutes, but the Authority may make use of the provisions of those Articles relating to the purchase of supplies, materials, equipment, or services, or to public building contracts, as the Authority deems appropriate. The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any purchases or building contracts exceeding two hundred fifty thousand dollars ($250,000) to which this exemption is applied."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S141-CSRU-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 141
THIS IS A DRAFT 24-FEB-97 20:42:08
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Exempt State Ports Purchase & Contract. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE STATE PORTS COMMISSION TO EXEMPT THE STATE PORTS AUTHORITY FROM STATE PURCHASE AND CONTRACT REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G. S. 143B-465 reads as rewritten:

"**§ 143B-465. Purchase of supplies, material and equipment and building contracts.**

~~All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority. All of the provisions of Chapter 143 of the General Statutes relating to public building contracts are hereby made applicable to the North Carolina State Ports Authority for those construction projects which may be funded, in whole or in part, by appropriations from the General Assembly.~~

The following general laws, to the extent provided below, do not apply to the North Carolina State Ports Authority:

(1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts for supplies,

materials, equipment and contractual services of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.

(2) Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.

(3) G.S. 143-341(3) shall not apply to the plans and specifications for construction or renovation authorized by the North Carolina State Ports Authority.

Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regards to matters governed by Articles 3 and 8 of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any purchases or building contracts exceeding two hundred fifty thousand dollars ($250,000) to which this exemption is applied."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 141 (PCS-002 Amendment No. _____

(to be filled in by Principal Clerk)

Rep.) RAND
)
Sen.)

moves to amend the bill on page 2, line 31

by DELETING THE WORD "LAW." AND SUBSTITUTING THE WORD "LAW, AND SHALL EXPIRE JULY 1, 2002."

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

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February 25, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 141 - EXEMPT STATE PORTS FROM PURCHASE AND CONTRACT** - Senator Rand.

Senate Bill 141 would exempt the State Ports Authority from normal purchase and contract requirements that apply to most state agencies. This bill is a recommendation of the State Ports Study Commission.

Section 1 of the bill would amend G.S. 143B-465 which currently makes the State Ports Authority subject to the provisions of Articles 3 and 8 of Chapter 143, by exempting the State Ports from the mandatory requirements of these Articles while allowing the State Ports to use the services of the Department of Administration in these areas when appropriate. Article 3 governs the purchase of supplies, materials and services by State government. Article 8 governs the construction projects. This section also requires the State Ports Authority to report to the Joint Legislative Commission on Governmental Operations quarterly on any purchases or building contracts exceeding $250,000.

This bill would become effective when it becomes law.

North Carolina
Department of Administration

James B. Hunt, Jr. Governor
Katie G. Dorsett, Secretary

Division of Purchase and Contract
J . Arthur Leaston, State Purchasing Officer

HOUSE BILL #164 & SENATE BILL #141

STATE PORTS/PURCHASE & CONTRACT

SUBJECT: To exempt the State Ports Authority from State Purchase and Contract requirements

CONCERNS:

1) Accountability: There will be no accountability on the way funds are spent. There will be no way to insure the money is being spent efficiently. Most of their purchases are probably under the reporting requirement of $250,000.00

The Board of Award, comprised mostly of legislators, currently advises on the award of contracts on purchases that exceed $10,000.00. They would loose sight of the majority of the expenditures by the Ports.

2) Oversight: There will be no oversight on how they conduct their business. Who would have oversight to ensure fair and open competition is being sought? The purchasing functions would go undetected. NOTE: The State Auditor does not perform this function.

Oversight by the Division of Purchase and Contract provides the opportunity to review files to insure purchasing practices used are in the best interest of the State.

3) Competition: Competition would not be required. Advertisement to alert potential sources and to show the procurement process is being conducted in an open and fair manner would not be required.

4) Staffing: Their staff would have to be enlarged resulting in a duplication of effort and unnecessary expenditures.

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State Courier 51-01-06
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5) Reporting: The Legislature, under Article 3, Chapter 143, requires numerous reports on what is purchased and with whom. They would not be required to provide these reports.

Reports filed by Purchase and Contract with the Legislature would be incomplete without knowledge of their procurements.

SUMMARY: The professional purchasing staff of the Division of Purchase and Contract are assigned by statute the responsibility and accountability for the procurement of goods and services, for the purpose of insuring effective and efficient expenditures of public funds. This provides for oversight by an unbiased party in the preparation, evaluation and award of contracts. It also prevents preference buying which is not permitted in governmental contracting.

2/25/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 142

Short Title: Port User on Ports Board. (Public)

Sponsors: Senators Rand; Hoyle and Perdue.

Referred to: Commerce.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE STATE PORTS STUDY COMMISSION TO PROVIDE THAT AT LEAST ONE MEMBER OF THE BOARD OF THE NORTH CAROLINA STATE PORTS AUTHORITY BE AFFILIATED WITH A MAJOR EXPORTER OR IMPORTER USING THE STATE PORTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-452 reads as rewritten:

"**§ 143B-452. Creation of Authority -- membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.**

The North Carolina State Ports Authority is hereby created. It shall be governed by a board composed of nine members and hereby designated as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11 members and hereby designated as the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. The Governor shall appoint seven members to the Authority, and the General Assembly shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall consist of seven persons appointed by the Governor, and four persons appointed by the General Assembly. Effective July 1, 1989, the Governor shall appoint six members to the Authority, in addition to the Secretary of Commerce, who shall serve as a voting member of the Authority by virtue of his office. The Secretary of Commerce shall fill the first vacancy occurring after July 1, 1989, in a position on the Authority over which the Governor has appointive power.

The initial appointments by the Governor shall be made on or after March 8, 1977, two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of six years.

To stagger further the terms of members:

(1) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1991, one member shall be appointed to a term of five years, to expire on June 30, 1996; the other member shall be appointed for a term of six years, to expire on June 30, 1997;

(2) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1993, one member shall be appointed to a term of five years, to expire on June 30, 1998; the other member shall be appointed to a term of six years, to expire on June 30, 1999;

(3) Of those members appointed by the Governor to replace the members whose terms expire on July 1, 1995, one member shall be appointed to a term of five years, to expire on June 30, 2000; the other member shall be appointed to a term of six years, to expire on June 30, 2001.

Thereafter, at the expiration of each stipulated term of office all appointments made by the governor shall be for a term of six years.

The members of the Authority appointed by the Governor shall be selected from the State-at-large and insofar as practicable shall represent each section of the State in all of the business, agriculture, and industrial interests of the State. <u>At least one member appointed by the Governor shall be affiliated with a major exporter or importer currently using the State Ports.</u> Any vacancy occurring in the membership of the Authority appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor may remove a member appointed by the Governor only for reasons provided by G.S. 143B-13.

The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. To stagger further the terms of members:

(1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;

(2) Of the members appointed upon the recommendation of the President of the Senate to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993. Successors to these persons for terms beginning on or after January 1, 1997, shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of two years.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members appointed by the General Assembly may be removed only for reasons provided by G.S. 143B-13.

The Governor shall appoint from the members of the Authority the chairman and vice-chairman of the Authority. The members of the Authority shall appoint a treasurer and secretary of the Authority.

The Authority shall meet once in each 60 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5."

Section 2. The member of the Authority representative of businesses using the State Ports, to be appointed by the Governor pursuant to Section 1 of this act, shall be appointed to replace the member of the Authority whose term expires June 30, 1998.

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

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February 25, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 142 - PORT USER ON PORTS BOARD** - Senator Rand.

Senate Bill 142 would require that one appointment to the State Ports Authority made by the Governor be a person affiliated with a major exporter or importer currently using the State Ports. This bill is a recommendation of the State Ports Study Commission.

Section 1 of the bill amends G.S. 143B-452 which creates the State Ports Authority and its board. This provision adds the requirement that at leaset one of the appointees of the Governor be a person affiliated with a major exporter or importer currently using the State Ports.

The board of the State Ports Authority has 11 members, 7 selected by the Governor (6 appointees and the Secretary of Commerce) and 4 appointed by the General Assembly (2 upon the recommendation of the Speaker, 2 upon the recommendation of the President Pro Tempore (beginning January 1, 1997)). The Governor's appointees serve 6-year terms, and their terms are currently staggered so that the Governor has one appointment per year. The General Assembly's appointees serve 2-year terms, and their terms are currently staggered so that the General Assembly appoints 2 members each year.

Section 2 of the bill provides that the Governor's appointment of a port user would be for the member whose term expires June 30, 1998.

The bill would be effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 157*

Short Title: Corporate Amendments. (Public)

Sponsors: Senators Hartsell; and Odom.

Referred to: Commerce.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. AMENDMENT OF DISSENTERS' RIGHTS PROCEDURES.

Section 1. G.S. 55-13-22(b) reads as rewritten:

"(b) The dissenters' notice must be sent no later than 10 days after ~~the corporate action was taken,~~ shareholder approval, or if no shareholder approval is required, after the approval of the board of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) Supply a form for demanding payment;

(4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and

(5) Be accompanied by a copy of this Article."

Section 2. G.S. 55-13-30 reads as rewritten:

"**§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 ~~and petition the court~~ by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. ~~Upon~~ Within 10 days after service upon it of the ~~petition filed with the court,~~ complaint, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the ~~petition.~~ complaint. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the superior court in which the proceeding is commenced under ~~subsection (b)~~ subsection (a) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. The proceeding shall be tried as in other civil actions. However, in a proceeding by a dissenter in a ~~public corporation,~~ corporation that was a public corporation immediately prior to consummation of the corporate action giving rise to the right of dissent under G.S. 55-13-02, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

PART II. ADVISORY REVIEW OF PRELIMINARY DRAFTS OF DOCUMENTS.

Section 3. Article 1 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-1-22.2. Advisory review of documents.**

The Secretary of State may honor a request for review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of

State. At the time of the advisory review, the Secretary of State shall notify the person submitting the document of all deficiencies in the document that would prevent its filing."

Section 4. Article 1 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-1-22.2. Advisory review of documents.**

The Secretary of State may honor a request for review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. At the time of the advisory review, the Secretary of State shall notify the person submitting the document of all deficiencies in the document that would prevent its filing."

Section 5. Article 1 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-1-22.2. Advisory review of documents.**

The Secretary of State may honor a request for review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. At the time of the advisory review, the Secretary of State shall notify the person submitting the document of all deficiencies in the document that would prevent its filing."

Section 6. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-206.2. Advisory review of documents.**

The Secretary of State may honor a request for review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Article. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. At the time of the advisory review, the Secretary of State shall notify the person submitting the document of all deficiencies in the document that would prevent its filing."

Section 7. G.S. 55-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of	

	registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation with amendment of articles	10.00 50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	25.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	10.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	~~10.00.~~ 10.00
(27)	Advisory review of a document	200.00."

Section 8. G.S. 55A-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$50.00
(2)	Application for reserved name	$10.00

(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	$25.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$100.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$5.00
(24a)	Designation of Principal Office Address	$5.00
(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization	$ 5.00
(27)	Any other document required or permitted to be filed by this Chapter	~~$10.00.~~ $10.00
(28)	Advisory review of a document	$200.00."

Section 9. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document		Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Articles of revocation of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	~~10.00.~~ 10.00
(27)	Advisory review of a document	200.00."

Section 10. G.S. 59-1106 reads as rewritten:

"**§ 59-1106. Fees.**

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing a certificate of limited partnership (G.S. 59-201)	~~$50.00~~
(2)	For filing a certificate of amendment (G.S. 59-202; 59-905)	~~25.00~~
(3)	For filing a certificate of cancellation (G.S. 59-203; 59-906)	~~25.00~~
(4)	For filing an application for reservation of name (G.S. 59-104(a))	~~10.00~~
(5)	For filing a transfer of name (G.S. 59-104(d))	~~10.00~~
(6)	For filing an application for registration as foreign limited partnership (G.S. 59-502)	~~50.00~~
(7)	For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c)) For each page	~~1.00~~
	For affixing ~~his~~ the certificate and official seal thereto.	~~5.00~~
(8)	For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership For each page	~~1.00~~
(9)	For filing any other document not herein specifically provided for	~~10.00~~
(10)	For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time	~~200.00~~ additional fee
(11)	For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays	~~100.00 additional fee.~~ additional fee
(12)	Advisory review of a document	200.00.

The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document."

PART III. CLARIFICATION OF ARTICLES OF CORRECTION PROCEDURES.

Section 11. G.S. 55-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (2) was defectively executed, attested, sealed, verified, or acknowledged."

Section 12. G.S. 55A-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

Section 13. G.S. 57C-1-24(a) reads as rewritten:

"(a) A domestic or foreign limited liability company may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively ~~executed.~~ executed, attested, sealed, verified, or acknowledged."

Section 14. G.S. 59-206(a) is amended by adding a new subdivision to read:

"(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

PART IV. RESTATEMENT OF LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION.

Section 15. Article 2 of Chapter 57C of the General Statues is amended by adding a new section to read:

"**§ 57C-2-22.1. Restated articles of organization.**

(a) A limited liability company may restate its articles of organization at any time with or without member action.

(b) The restated articles of organization may include one or more amendments to the articles. Unless otherwise provided in the articles of organization or a written operating agreement, any amendment requires the unanimous vote of the members. The restated articles of organization may include a statement of the address of the current registered office and the name of the current registered agent of the limited liability company.

(c) A limited liability company restating its articles of organization shall deliver to the Secretary of State for filing articles of restatement that:

(1) Set forth the name of the limited liability company.

(2) Attach as an exhibit thereto the text of the restated articles of organization.

(3) State that the restated articles of organization do not contain an amendment or, if the articles do contain an amendment, that there is an amendment that was approved as required by this Chapter.

(d) Duly adopted restated articles of organization supersede the original articles of organization and all amendments to them.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect, without including the other information required by subsection (c) of this section."

PART V. CANCELLATION OF ARTICLES OF DISSOLUTION OF LIMITED LIABILITY COMPANY.

Section 16. Article 6 of Chapter 57C is amended by adding a new section to read:

"**§ 57C-6-06.1. Cancellation of articles of dissolution.**

After the filing of articles of dissolution by a limited liability company dissolved pursuant to G.S. 57C-6-01(4) because of the happening of an event of withdrawal, the articles of dissolution may be cancelled if, within 90 days after the event of withdrawal, all remaining members agree in writing that the business of the limited liability company should be continued and the limited liability company files articles of cancellation with the Secretary of State. The Articles of Cancellation shall set forth:

(1) The name of the limited liability company;

(2) The date of the event of withdrawal described in the articles of dissolution;

(3) The date of filing of the company's articles of dissolution;

(4) A statement that within 90 days after the event of withdrawal, all remaining members have agreed in writing that the business of the limited liability company may be continued; and

(5) Any other information the members or managers filing the articles of cancellation determine."

Section 17. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00

(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	~~Articles~~ Cancellation of articles of ~~revocation of~~ dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00."

PART VI. AVAILABILITY OF LIMITED LIABILITY COMPANY NAME.

Section 18. G.S. 57C-2-30(f) reads as rewritten:

"(f) The name of a limited liability company dissolved under ~~G.S. 57C-6-03~~ Article 6 of this Chapter may not be used by another limited liability ~~company~~ company, business corporation, nonprofit corporation, or limited partnership ~~until the expiration of two years after the effective date of the dissolution~~ until:

(1) In the case of a dissolution pursuant to G.S. 57C-6-01, the later of (i) the date of filing of articles of dissolution pursuant to G.S. 57C-6-06 or (ii) the expiration of the time within which articles of dissolution of the limited liability company may be canceled pursuant to G.S. 57C-6-06.1; or

(2) In the case of an administrative dissolution pursuant to G.S. 57C-6-03, the expiration of the period within which the limited liability company may be reinstated pursuant to G.S. 57C-6-03, if the limited liability company's period of duration stated in its articles of organization or written operating agreement has not expired,

unless the dissolved limited liability company changes its name to a name distinguishable upon the records of the Secretary of State from the names of other limited liability companies, business corporations, nonprofit corporations, or limited partnerships organized or transacting business in this State."

PART VII. AUTHORIZATION OF FACSIMILE SIGNATURES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 19. G.S. 59-204 is amended by adding a new subsection to read:

"(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile."

PART VIII. MODIFICATION OF DEFINITION OF FOREIGN PROFESSIONAL CORPORATION.

Section 20. G.S. 55B-16(b) reads as rewritten:

"(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit ~~that is~~ that:

(1) Is incorporated under a law other than the law of this ~~State~~ State;

(2) Is incorporated for the sole and specific purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in ~~G.S. 55B-2(6)~~ G.S. 55B-2(6); and ~~that (i) has as its shareholders only individuals who are duly licensed, in this State or some other state, to render the same professional services as the corporation, or (ii) is organized for the purpose of rendering professional services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has as its shareholders only individuals who are duly licensed, in this State or in another state, to render the same professional services as the corporation or who are nonlicensed employees of the corporation, provided that nonlicensed employees own not more than one-third of the total issued and outstanding shares of the corporation, or (iii) is described in G.S. 55B-15.~~

(3) Has as its shareholders only individuals who:

a. Qualify to hold shares of a corporation organized under this Chapter;

b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; or

c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate."

PART IX. CORRECTION OF DELAYED EFFECTIVE DATE STATUTES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 21. G.S. 59-201(b) reads as rewritten:

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: Senate Commerce Committee

FROM: General Statutes Commission

DATE: February 24, 1997

RE: **Senate Bill 157 (Corporate Amendments)**

General Comments

Senate Bill 157 amends various statutes relating to business corporations, nonprofit corporations, professional corporations, limited liability companies, and limited partnerships. The bill amends the law governing dissenters' rights procedures and the filing of documents by limited liability companies; allows facsimile signatures and advisory review of documents by the Secretary of State; and clarifies corrections procedures, limited liability company name availability, and the definition of foreign professional corporations. Parts II through XI of this bill were prepared in cooperation with the Office of the Secretary of State.

Specific Comments

Part I. Amendment of Dissenters' Rights Procedures.

This Part amends G.S. 55-13-22(b) to eliminate an ambiguity caused by the term "corporate action" by making it clear that the term refers to shareholder approval, or if no shareholder approval is required, then approval of the board of directors, of the corporate transaction creating dissenters' rights under G.S. 55-13-02. The Part also amends G.S. 55-13-30: (1) to clarify that a dissenters' rights proceeding is a civil action that must be heard by a superior court judge and is local rather than transitory in nature; (2) to specify a period of time within which a corporation must pay a dissenting shareholder after a complaint in a dissenters' rights proceeding is served on the corporation; and (3) to clarify that there is no right to a jury trial in a proceeding by a dissenter in a public corporation that was a public corporation

immediately prior to consummation of the corporate action, e.g. merger, creating the right of dissent.

Part II. Advisory Review of Preliminary Drafts of Documents.

This Part amends Chapters 55, 55A, and 57C to provide explicit authority for the Secretary of State to perform an advance review of documents to be submitted for filing at a later date. The Part also authorizes the Secretary of State to charge a fee of $200 for the review.

Part III. Clarification of Articles of Correction Procedures.

This Part clarifies that articles of correction may be used to correct an incorrect statement in a filed document only if the statement was incorrect when the document was filed. The Part also amends Chapter 59 to permit a limited partnership to correct an incorrect statement in a document filed with the Secretary of State.

Part IV. Restatement of Limited Liability Company Articles of Organization.

This Part adds a new section to Chapter 57C to permit limited liability companies to file restated articles of organization. G.S. 57C-1-22(a) presently authorizes the Secretary of State to collect filing fees for restated articles of organization, both with and without amendments, but Chapter 57C otherwise contains no explicit authority for restated articles.

Part V. Cancellation of Articles of Dissolution of Limited Liability Company.

This Part adds a new section to Chapter 57C to permit limited liability companies to cancel articles of dissolution. The Part also makes a conforming amendment to G.S. 57C-1-22(a).

Part VI. Availability of Limited Liability Company Name.

This Part authorizes the Secretary of State to permit the name of a dissolved limited liability company to be used by another company once it is certain that the dissolved company cannot be returned to an active status either by vote of the members to carry on the business or by reinstatement from administrative dissolution.

Part VII. Authorization of Facsimile Signatures for Limited Partnership Documents.

This Part permits limited partnerships to use facsimile signatures on any document authorized to be filed with the Secretary of State. The Part brings the limited partnership statutes in conformity with the statutes governing business corporations, nonprofit corporations, and limited liability companies.

Part VIII. Modification of Definition of Foreign Professional Corporation.

This Part eliminates a conflict between G.S. 55B-15, which excludes from the scope of the Professional Corporation Act grandfathered business corporations (those incorporated and engaging in professional services prior to June 5, 1969), and G.S. 55B-16, which requires foreign grandfathered corporations applying for certificates of authority to meet the requirements contained in G.S. 55B-16(a).

Part IX. Correction of Delayed Effective Date Statutes for Limited Partnership Documents.

This Part eliminates the 20-day delayed effective date provision in G.S. 59-201(b) for a certificate of limited partnership and in G.S. 59-203(4) for a certificate of cancellation. These provisions conflict with the 90-day delayed effective date provision in G.S. 59-206(b2) for any limited partnership document. The elimination of this conflict conforms the delayed effective date limits for limited partnerships to the delayed effective date limits authorized for business corporations, nonprofit corporations, and limited liability companies.

Part X. Removal of "Conforming to Law" Language in Revised Uniform Limited Partnership Act.

This Part requires the Secretary of State to file a limited partnership document if it satisfies the requirements of the Revised Uniform Limited Partnership Act, G.S. 59-101 et seq., rather than if the document conforms to law. The Part brings the limited partnership statutes in conformity with the statutes governing business corporations, nonprofit corporations, and limited liability companies.

Part XI. Effective Dates.

This Part contains effective date and applicability provisions.

North Carolina General Assembly
Legislative Services Office

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February 24, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 157 (Corporate Amendments)

Section 1 changes the time allotted to a corporation to notify dissenting shareholders that it is taking action that will invoke the dissenter's rights to obtain payment for the fair value of their shares. Currently, the notice must be given within 10 days after the corporate action was taken. Section 1 requires the notice to be given within 10 days after shareholder approval of the corporate action or, if no shareholder approval was required, within 10 days after approval of the corporate action by the board of directors.

Section 2 amends the law governing the dissenter's filing of a lawsuit to resolve an unsettled claim for payment for shares. The amendments specify that suit must be brought in *superior* court and gives the corporation a specific time period (10 days after suit is brought) in which to pay to the dissenter the amount that is has already offered to the dissenter. The suit will be tried as any other civil action, except there is no trial by jury if the corporation was a public corporation at the time it took the action creating the dissenter's rights.

Sections 3, 4, 5, and 6 of the bill authorize the Secretary of State to review in advance a document to be filed by a corporation, nonprofit corporation, limited liability company, or limited partnership to ensure that the document contains the information necessary for it to be accepted for filing and to alert the filer of any needed changes.

Sections 7, 8, 9 and 10 provide for a $200 fee for this advanced review for each of these four types of entities.

Sections 11 through 14 allow these four types of entities to correct a document filed with the Secretary of State if the information to be corrected was incorrect at the time of filing and continues to be incorrect. Limited liability companies and limited partnerships will also be able

to correct a defective attestation, seal, verification, or acknowledgement. (Corporations and nonprofit corporations can already do this).

Section 15 adds a new provision concerning restatement of limited liability company articles of organization.

Section 16 adds a new provision for cancellation of articles of dissolution of a limited liability company. A limited liability company may cancel articles of dissolution it has filed by filing, with the agreement of the remaining members, articles of cancellation within 90 days of the event of withdrawal.

Section 17 renames "articles of revocation of dissolution" as "cancellation of articles of dissolution."

Section 18 sets out the time period after the dissolution of a limited liability company in which no business can use the name of the dissolved limited liability company.

Section 19 acknowledges faxed signatures on partnership document filings.

Section 20 modifies the definition of a foreign professional corporation.

Sections 21 and 22 amend the delayed effective date statute for limited partnerships. The change allows the partnership to specify a delayed effective date as to when the partnership comes into existence. Currently, the effective date can be delayed only up to 20 days after the endorsement by the Secretary of State. A similar change was made for a delay in cancellation of a certificate of limited partnership.

Sections 23 and 24 revise language in the limited partnership laws concerning the Secretary of State determining whether filed documents "conform to law." The Secretary instead will determine whether "the requirements of this article (Uniform Limited Partnership Act) are met."

Section 25 sets out the effective dates for the changes. The changes concerning dissenter's rights, the changes concerning advisory review of documents, and certain other changes take effect October 1, 1997. The remaining portions of the bill take effect when the bill becomes law.

VISITOR REGISTRATION SHEET

Commerce — 2-25-97
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Bernard Allen	Secy of State
Sam Monon	Spirit
Dave Simpson	CAROLINAS AGC
Leo Tilley	Commerce
Angie Harris	"
Carlene Dawkins	Dept of State
David L Hasson	"
Elaine F Marshall	"
Charles J Murray	General Statutes Commission
Stuart Dixon	N.C Natural Gas Corp, Fayetteville
Martha Glass	DOA
John Leaston	DOA P3C
John Rustin	Hunton & Williams
Sparr of Pledger	State Court Office
Q - Lyn	DOT
Guy Rowland	May Dist: States

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	DOR
Charles Hawks	DOR
McNeil Chestnut	AG's Office
JACK Tilley, Chr.	NCPRTS Advisory Council
Lucius Pullen	ATTORNEY
Jamie Callemyn	Senator Rand's Intern
R. Ray Wood	General Statutes Commission
Floyd M. Lewis	General Statutes Commission
Doris R Bray	General Statutes Commission
[illegible]	NCCA

MINUTES
SENATE COMMERCE COMMITTEE
March 4, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, March 4, 1997. Nineteen members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator Soles called the meeting to order.

The following bills were considered by the Committee:

SJR 107, A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF WILLIAM R. PITTMAN MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Senator Soles recognized Mr. Pittman for remarks. (See attached Resume, Statement of Economic Interest, and other information relating to this appointment.) Mr. Pittman elaborated on his background and his interest in serving on the Commission. Questions were asked by various members of the Committee. In addition to Senators Cooper and Reeves, sponsors of the resolution, Senators Hoyle, Kerr, Lee and Rand spoke in support of Mr. Pittman. Senator Hoyle moved that SJR 107 be given a favorable report. Motion carried.

SB 153, AN ACT TO EXTEND THE SCRAP TIRE DISPOSAL TAX AT ITS CURRENT RATE, TO AMEND THE SCRAP TIRE DISPOSAL ACT TO DISCOURAGE THE DISPOSAL OF SCRAP TIRES FROM OUTSIDE THE STATE, AND TO COMPLETE THE CLEANUP OF NUISANCE TIRE COLLECTION SITES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Senator Odom was recognized for an explanation of the bill. (See attached information on the Scrap Tire Disposal Account.) Senator Odom said the thrust of the bill was to take out the sunset provision in the law which expires at the end of the fiscal year. Senator Odom said that 50 per cent of the fees collected goes to the counties; 40 percent to recycling and 10 per cent to clean up sites. Senator Ed Warren moved that SB 153 receive a favorable report and that it be re-referred to the Finance Committee. Motion carried.

SB 158, AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION, TO INCREASE THE FEE CORPORATIONS MUST PAY FOR REINSTATEMENT AFTER ADMINISTRATIVE DISSOLUTION, TO ESTABLISH A FEE LIMITED LIABILITY COMPANIES MUST PAY FOR REINSTATEMENT AFTER ADMINISTRATIVE DISSOLUTION, AND TO PROVIDE THAT ANNUAL REPORTS OF BUSINESS CORPORATIONS AND LIMITED LIABILITY COMPANIES SHALL BE FILED WITH THE DEPARTMENT OF REVENUE RATHER THAN THE SECRETARY OF STATE, AS RECOMMENDED BY THE GENERAL STATUTES STUDY COMMISSION. Mrs. Doris Bray, member of the General Statutes Commission, explained the bill. (See attached memorandum for specific information on the bill.) Mr. David Massey with the Secretary of State's Office assisted in answering questions. Senator Hoyle moved that SB 158 be given a favorable report but re-referred to the Finance Committee. Motion carried.

S. B. 163, AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION. Senator Hartsell, the bill sponsor, introduced Mr. Charlie Murray, a member of the Drafting Committee of the General Statutes Commission, who explained the bill. (See attached memoranda for information on the legislation.) Mr. Tom Andrews, Chief Counsel for the Administrative Office of the Courts, said the bill would have some effect on their operation but it was difficult to calculate to what extent. Senator Hoyle moved that the bill be given a favorable report and that it be re-referred to the Finance Committee. Motion carried.

There being no further business, the meeting adjourned at 12:10 p.m.

Senator R. C. Soles, Jr., Chairman

Mrs. Joan R. Leatherman
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, March 04, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.J.R. **107** Confirmation of William R. Pittman
Sequential Referral: None
Recommended Referral: None

S.B. **153** Scrap Tire Disposal Tax Amend.
Sequential Referral: None
Recommended Referral: Finance

S.B. **158** Administrative Dissolution/Annual Rept.
Sequential Referral: Appropriations
Recommended Referral: Finance

S.B. **163** Securities Transfer on Death
Sequential Referral: None
Recommended Referral: Finance

TOTAL REPORTED: 4

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE JOINT RESOLUTION 107

Sponsors: Senators Cooper; and Reeves.

Referred to: Commerce.

February 13, 1997

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

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

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

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

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

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

Section 2. This resolution is effective upon ratification.

WILLIAM R. (BILL) PITTMAN

EXPERIENCE

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

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

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

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

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

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

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

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

MILITARY

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

EDUCATION

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

PROFESSIONAL & CIVIC

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

PERSONAL

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

1997

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

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

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

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

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

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

Name of Person Filing WILLIAM R. PITTMAN

COMMISSIONER
State Employee Position, Agency

UTILITIES COMMISSION
Name of Board or Commission

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

William R. Pittman 2/21/97
Signature Date

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

1996

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

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

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

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Name of Person Filing WILLIAM R. PITTMAN

COUNSEL TO THE GOVERNOR, GOVERNOR'S OFC
State Employee Position, Agency

Name of Board or Commission

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

William R. Pittman 1/18/96
Signature Date

1995

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

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

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

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

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

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Name of Person Filing WILLIAM R. PITTMAN

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

Name of Board or Commission

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

Signature Date

Home or Business Address, and Telephone Numbers _____

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

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

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

NONE

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

NONE

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

N/A

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

LAW LICENSE, NC STATE BAR

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

N/A

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

* CERTIFICATE(S) OF DEPOSIT

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

N/A

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

BASS, BRYANT & MOORE - PROFESSIONAL FEES

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

N/A

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

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

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

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

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

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

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

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

N/A

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

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

N/A

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

NONE

VERIFICATION

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

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

5/4/95
Date

William M. Hetzner
Signature

5/4/94

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

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

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

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

Name of Person Filing: WILLIAM R. PITTMAN

Home Address: 312 THOMAS DR
CLAYTON, NC 27520

Home Telephone: 919 550 1045

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

Employer: GOVERNOR'S OFFICE

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

Office Telephone: 919 733 2737

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

Name of Board

Position (example = at large position)

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

* 312 THOMAS DR, CLAYTON, NC 27520

HOUSE & LOT

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

NONE

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

NONE

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

N/A

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

N/A

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

N/A

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

* STATE EMPLOYEES RETIREMENT ACCOUNT

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

NONE

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

STATE OF NC, ADMINISTRATIVE OFFICE OF THE COURTS - SALARY

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

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

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

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

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

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

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

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

N/A

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

N/A

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

NONE

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

NONE

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

NONE

VERIFICATION

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

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

5/4/93
Date

William R. Stone
Signature

STATE OF NORTH CAROLINA

COUNTY OF Wake

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

My Commission Expires:
November 27, 1998

Gail P. Simmons
Notary Public

GAIL P. SIMMONS NOTARY PUBLIC WAKE COUNTY, NC

North Carolina General Assembly
Legislative Services Office

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

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

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

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

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

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

March 4, 1997

MEMORANDUM

TO: **Senate Committee on Commerce**

FROM: **Steven Rose, Committee Counsel for Public Utilities**

RE: **Senate Joint Resolution 107; Confirmation of appointment of William R. Pittman to the North Carolina Utilities Commission**

Senate Joint Resolution 107 confirms the appointment of William R. Pittman as a member of the North Carolina Utilities Commission. Commissioner Pittman was appointed by Governor Hunt to serve the remainder of the unexpired term of Commissioner Hugh Wells. This term will expire June 30, 2001.

The North Carolina Utilities Commission consists of seven commissioners who are appointed for eight year terms. Commissioners are appointed by the Governor and must be confirmed by the General Assembly by Joint Resolution. Vacancies are filled by the Governor with confirmation by the General Assembly. A vacancy arising when the General Assembly is not in Session, may be filled by the Governor if he deems the appointment urgent. The Commissioner so appointed serves on an interim basis pending confirmation by the General Assembly. Mr. Pittman was appointed in this manner.

A Utilities Commissioner is paid the same salary as a Superior Court Judge, $90,915 at present. There are fixed salary increases based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years. Members of the Utilities Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment.

During service on the Commission, a Commissioner may not engage in any other employment, business, profession or vocation. During the term of office the Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

The General Assembly created the Utilities Commission and establishes policies which the Commission carries out, usually with broad discretion. The Commission is both a regulator of public utilities, as well as a judge in all contested matters relating to public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, telecommunications services, water and sewer services, taxis, buses, trains, trucking services, express package and mail services, and radio common carriers. The extent of this regulation varies from utility to utility, and there are

limitations imposed by federal law. The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of rates, the adjustment of electric utility rates based upon fuel cost changes, the provision of new utility services, and the adjudication of complaints concerning the services of public utilities. Again, the extent of the Commission's jurisdiction varies from utility to utility and is effected in some cases by federal law.

Article 2.

Organization of Utilities Commission.

§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.

(a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be eight years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the eighth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975, one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for eight years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then current session of the General Assembly.

(OVER)

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as the chairman shall receive one thousand dollars ($1,000) additional per annum. In lieu of merit and other increment raises paid to regular State employees, each commissioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. "Service" means service as a member of the Utilities Commission.

(i) The standards of judicial conduct provided for judges in Article 30 Chapter 7A of the General Statutes shall apply to members of the Commission. Members of the Commission shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.

(j) Members of the Commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a). (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 867, ss. 1, 2; 1977, c. 468, s. 1; c. 913, s. 2; 1983 (Reg. Sess., 1984), c. 1116, s. 91; 1989, c. 781, s. 41.2; 1993 (Reg. Sess., 1994), c. 769, s. 7.4(b); 1996, 2nd Ex. Sess., c. 18, s. 28.2(b).)

§ 62-11. Oath of office.

Each utilities commissioner before entering upon the duties of his office shall file with the Secretary of State his oath of office to support the Constitution and laws of the United States and the Constitution and laws of the State of North Carolina, and to well and truly perform the duties of his said office as utilities commissioner, and that he is not the agent or attorney of any public utility, or an employee thereof, and that he has no interest in any public utility. (1933, c. 134, s. 5; 1935, c. 280; 1939, c. 404; 1941, c. 97; 1963, c. 1165, s. 1.)

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February 27, 1997

SENT BY FACSIMILE TRANSMISSION

The Honorable William R. Pittman
North Carolina Utilities Commission
430 North Salisbury Street
Raleigh, North Carolina 27611

Dear Commissioner Pittman:

Congratulations on your appointment to the North Carolina Utilities Commission. As you are aware, your appointment must be confirmed by the General Assembly. To that end, Senate Joint Resolution 107 was introduced February 13, 1997, and has been referred to the Senate Committee on Commerce for consideration. The Senate Committee on Commerce will take this matter up on Tuesday, March 4, 1997, at 11:00 a.m. in Room 1027 of the Legislative Building.

Please prepare a resume for review by the Committee. This resume should include both professional and biographical information. I would appreciate receiving this document by Monday, March 3, 1997. This will allow me to have copies made for the Committee.

In addition, the Committee will have before it copies of the statements of economic interest filed by you with the North Carolina Board of Ethics pursuant to Executive Order #1.

At the committee meeting, please be prepared to elaborate on your qualifications and background. You are invited to present any witnesses who may wish to speak on your appointment. The Committee will also hear from other interested persons if they desire to speak concerning your appointment.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

My office is located in Suite 545 of the Legislative Office Building. Please contact me if you need any further information or assistance as you prepare for the Committee meeting.

Sincerely,

Steven Rose
Committee Counsel for Public Utilities
Senate Committee on Commerce

Copy to: Senator R. C. Soles, Jr., Chairman
Senate Committee on Commerce

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 153*

Short Title: Scrap Tire Disposal Tax Amend. (Public)

Sponsors: Senator Odom.

Referred to: Commerce.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SCRAP TIRE DISPOSAL TAX AT ITS CURRENT RATE, TO AMEND THE SCRAP TIRE DISPOSAL ACT TO DISCOURAGE THE DISPOSAL OF SCRAP TIRES FROM OUTSIDE THE STATE, AND TO COMPLETE THE CLEANUP OF NUISANCE TIRE COLLECTION SITES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 9 of Chapter 548 of the 1993 Session Laws reads as rewritten:

"Sec. 9. Section 4 of this act becomes effective January 1, 1994. ~~Section 8 of this act becomes effective June 30, 1997.~~ All other sections of this act become effective October 1, 1993. ~~Sections 1 through 6 of this act expire June 30, 1997.~~ Section 7 of this act expires June 30, 1995. ~~Any funds remaining in the Scrap Tire Disposal Account created by this act on June 30, 1997, shall be transferred to the Solid Waste Management Trust Fund. The expiration of the additional tax imposed by Section 1 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arise during the time the additional tax is in effect.~~ The first quarterly report required by G.S. 130A-309.63(e), as enacted by this act, is due within 60 days after the quarter that ends on December 31, 1993."

Section 2. G.S. 130A-309.63 reads as rewritten:

"**§ 130A-309.63. Scrap Tire Disposal Account.**

(a) Creation. -- The Scrap Tire Disposal Account is established as a nonreverting account within the Department. The Account consists of revenue credited to the

Account from the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes.

(b) Use. -- The Department may use revenue in the Account only as authorized by this section. The Department may use up to ~~twenty-five percent (25%)~~ fifty percent (50%) of the revenue in the Account to make grants to units of local government to assist them in disposing of scrap tires. To administer the grants, the Department shall establish procedures for applying for a grant and the criteria for selecting among grant applicants. The criteria shall include the financial ability of a unit of local government to provide for scrap tire disposal, the severity of a unit of local government's scrap tire disposal problem, the effort made by a unit of local government to ensure that only tires generated in the normal course of business in this State are provided free disposal, and the effort made by a unit of local government to provide for scrap tire disposal within the resources available to it. The Department may use up to forty percent (40%) of the revenue in the Account to make grants to encourage the use of crumb rubber. Grants to encourage the use of crumb rubber shall be made in consultation with the Department of Commerce and the Recycling Business Assistance Center. Grants to encourage the use of crumb rubber shall not be used to process tires.

(c) Eligibility. -- A unit of local government is not eligible for a grant unless its costs for disposing of scrap tires for the six-month period preceding the date the unit of local government files an application for a grant exceeded the amount the unit of local government received during that period from the proceeds of the scrap tire tax under G.S. 105-187.19. A grant to a unit of local government may not exceed the unit of local government's unreimbursed cost for the six-month period.

(d) Cleanup of Nuisance Tire Sites. -- The Department may use the remaining revenue in the Account only to clean up scrap tire collection sites that the Department has determined are a nuisance. The Department may use funds in the Account to clean up a nuisance tire collection site only if no other funds are available for that purpose. The Department may use funds in the Account to establish and support a position to provide regulatory assistance to local governments to develop programs to prevent scrap tires from outside the State from being presented for free disposal and to complete the cleanup of nuisance tire collection sites.

(e) Reports. -- The Department shall report annually on the Scrap Tire Disposal Account to the Environmental Review Commission. The report shall be submitted by 1 October of each year for the fiscal year ending the preceding 30 June. The report shall show the beginning and ending balances in the Account for the reporting period, the amount credited to the Account during the reporting period, and the amount of revenue used for grants and to clean up nuisance tire collection sites."

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

SCRAP TIRE DISPOSAL ACCOUNT
BUDGET CODE 64303
FUND-6770-ACCOUNT-6967/6989

PURPOSE To provide grants to counties for cost overruns of their current generation scrap tire management programs-funding began 2/94 and sunsets 6/97

To provide funds for cleanup of nuisance tire sites across the state

SOURCE OF FUNDS 27% of the 2% Scrap Tire Tax

TOTAL FUNDS RECEIVED 27% of 2% scrap tire tax	$6,602,409.71
25% FOR COUNTY COST OVERRUNS 205 requests totalling $3,021,717.41	$1,650,602.45
FUNDS ENCUMBERED	$1,701,682.84
FUNDS EXPENDED	$2,824,139.77
CURRENT BALANCE (funds not committed)	$425,984.58

TOTAL KNOWN TIRES IN N.C.. Found at 269 nuisance tire sites on file and county wide cleanups	5,003,044
TOTAL NUMBER OF TIRES CLEARED From 178 sites cleared, and those currently under state and county wide cleanups	3,617,419
TIRES ON SITES CONTRACTED/CLEANUP Remaining on 61 sites under state and county wide cleanups	1,271,350
TIRES AT **30** SITES AWAITING ACTION	114,275

ISSUES OF CONCERN:

1. Out of state tires being presented for free disposal
2. Extension of the sunset of the tax
3. Counties continue to have deficits in large part due to out of state tires
4. Breakdown of 2% Scrap Tire Tax:
   - 68% to County Scrap Tire Management Programs
   - 27% to the Scrap Tire Disposal Account
   - 5% to the Solid Waste Trust Fund

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 158*

Short Title: Administrative Dissolution/Annual Rept. (Public)

Sponsors: Senators Hartsell; Foxx and Odom.

Referred to: Commerce.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION, TO INCREASE THE FEE CORPORATIONS MUST PAY FOR REINSTATEMENT AFTER ADMINISTRATIVE DISSOLUTION, TO ESTABLISH A FEE LIMITED LIABILITY COMPANIES MUST PAY FOR REINSTATEMENT AFTER ADMINISTRATIVE DISSOLUTION, AND TO PROVIDE THAT ANNUAL REPORTS OF BUSINESS CORPORATIONS AND LIMITED LIABILITY COMPANIES SHALL BE FILED WITH THE DEPARTMENT OF REVENUE RATHER THAN THE SECRETARY OF STATE, AS RECOMMENDED BY THE GENERAL STATUTES STUDY COMMISSION.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE DISSOLUTIONS.

Section 1. G.S. 55-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(3) Reserved.

(4) Repealed by Session Laws 1995, c. 539, s. 6."

Section 2. G.S. 55A-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated."

Section 3. G.S. 57C-6-03(c) reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of the administrative dissolution. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

Section 4. G.S. 55-1-22 reads as rewritten:

"**§ 55-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to ~~him~~ the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative	

	dissolution	No fee
~~(16)~~	~~Application for reinstatement following administrative dissolution~~	~~25.00~~
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	10.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on ~~him~~ the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

(d) The Secretary of State shall collect a fee of two hundred dollars ($200.00) for each year, or portion of a year, following the effective date of an administrative dissolution when an application for reinstatement following an administrative dissolution is delivered to the Secretary for filing."

Section 5. G.S. 55A-1-22 reads as rewritten:

"**§ 55A-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$50.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00

(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
~~(17)~~	~~Application for reinstatement following administrative dissolution~~	~~$25.00~~
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$100.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$5.00
(24a)	Designation of Principal Office Address	$5.00
(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization	$ 5.00
(27)	Any other document required or permitted to be filed by this Chapter	$10.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

(d) The Secretary of State shall collect a fee of two hundred dollars ($200.00) for each year, or portion of a year, following the effective date of an administrative dissolution when an application for reinstatement following an administrative dissolution is delivered to the Secretary for filing."

Section 6. G.S. 57C-1-22 is amended by adding a new subsection to read:

"(d) The Secretary of State shall collect a fee of two hundred dollars ($200.00) for each year, or portion of a year, following the effective date of an administrative dissolution when an application for reinstatement following an administrative dissolution is delivered to the Secretary for filing."

PART II. ANNUAL CORPORATE REPORT.

Section 7. G.S. 55-16-22 reads as rewritten:

"**§ 55-16-22. Annual report for Secretary of ~~State.~~ Revenue.**

(a) Each domestic corporation except those governed by Chapter 55B, and each foreign corporation authorized to transact business in this State, shall deliver to the Secretary of ~~State~~ Revenue for filing an annual ~~report~~ report, in a form prescribed by the Secretary of Revenue, that sets ~~forth:~~ forth all of the following:

(1) The name of the corporation and the state or country under whose law it is ~~incorporated;~~ incorporated.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.

(4) The names, titles, and business addresses of its principal ~~officers;~~ officers.

~~(4a) The names and business addresses of its directors; and~~

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) The annual report shall be delivered to the Secretary of ~~State each year~~ Revenue ~~within 60 days immediately following the last day of the month in which the domestic corporation was incorporated or the foreign corporation received a certificate of authority in this State.~~ by the due date for filing the corporation's income and franchise tax returns. If a corporation requests an extension of time for filing its income and franchise tax return, then the annual report must be delivered to the Secretary of Revenue with its application for an extension of time for filing. ~~Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign corporation at its registered office for the first annual~~

~~report, then to its principal office for subsequent annual reports.~~ Forms required for the filing of annual reports shall be made available by the Secretary of Revenue.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in ~~such~~ the annual report.

(f) Expired.

(g) When a statement of change of registered office or registered agent is filed in the annual report, the change shall become effective when the statement is received by the Secretary of State.

(h) If the Secretary of State does not receive an annual report from the Secretary of Revenue, it shall be presumed that the annual report was not filed with the Secretary of Revenue."

Section 8. G.S. 55-1-21(a) reads as rewritten:

"(a) The Secretary of State may promulgate and furnish on request forms ~~for:~~ for the following:

(1) An application for a certificate of ~~existence;~~ existence.

(2) A foreign corporation's application for a certificate of authority to transact business in this ~~State;~~ State.

(3) A foreign corporation's application for a certificate of ~~withdrawal;~~ ~~and~~ withdrawal.

~~(4) The annual report.~~

If the Secretary of State so requires, use of these forms is mandatory."

Section 9. G.S. 55-1-22(a), as amended by Section 4 of this act, reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected	

	corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Repealed.	
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
~~(23)~~	~~Annual report~~	~~10.00~~
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00."

Section 10. G.S. 55-1-28(b)(4) reads as rewritten:

"(4) That its most recent annual report required by G.S. 55-16-22 has been delivered to the Secretary of ~~State;~~ Revenue;".

Section 11. G.S. 55-14-20(2) reads as rewritten:

"(2) The corporation does not deliver its annual report to the Secretary of ~~State within 60 days after it is due;~~ Revenue on or before the date it is due;".

Section 12. G.S. 55-15-30(a)(1) reads as rewritten:

"(1) The foreign corporation does not deliver its annual report to the Secretary of ~~State within 60 days after it is due;~~ Revenue on or before the date it is due;".

Section 13. G.S. 55-16-01(e)(7) reads as rewritten:

"(7) Its most recent annual report delivered to the Secretary of ~~State~~ Revenue under G.S. 55-16-22."

Section 14. G.S. 57C-2-23 reads as rewritten:

"**§ 57C-2-23. Annual report for Secretary of ~~State.~~ Revenue.**

(a) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of ~~State~~ Revenue for filing an annual ~~report~~ report, in a form prescribed by the Secretary of Revenue, that sets ~~forth:~~ forth all of the following:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is ~~organized;~~ organized.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.

(4) The names and business addresses of its ~~managers; and~~ managers.

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company or the foreign limited liability company.

(c) The annual report shall be delivered to the Secretary of ~~State each year~~ Revenue ~~within 60 days immediately following the last day of the month in which the domestic limited liability company was organized or the foreign limited liability company received a certificate of authority in this State.~~ by the due date for filing the limited liability company's partnership tax return. If a limited liability company requests an extension of time for filing its partnership tax return, then the annual report must be delivered to the Secretary of Revenue with its application for an extension of time for filing. ~~Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign limited liability company at its registered office for the first annual report, and then to its principal office for subsequent annual reports.~~ Forms required for the filing of annual reports shall be made available by the Secretary of Revenue.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) When a statement of change of registered office or registered agent is filed in the annual report, the change shall become effective when the statement is received by the Secretary of State.

(g) If the Secretary of State does not receive an annual report from the Secretary of Revenue, it shall be presumed that the annual report was not filed with the Secretary of Revenue."

Section 15. G.S. 57C-1-22, as amended by Section 6 of this act, reads as rewritten:

"**§ 57C-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Articles of revocation of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00

(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
~~(25)~~	~~Annual report~~	~~200.00~~
(26)	Any other document required or permitted to be filed by this Chapter	10.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate.

(d) The Secretary of State shall collect a fee of two hundred dollars ($200.00) for each year, or portion of a year, following the effective date of an administrative dissolution when an application for reinstatement following an administrative dissolution is delivered to the Secretary for filing."

Section 16. G.S. 57C-3-25(a) reads as rewritten:

"(a) Any person dealing with a limited liability company or a foreign limited liability company may rely conclusively upon its most recent annual report and any amendments ~~thereto filed with~~ to it on file with the Secretary of State ~~pursuant to G.S. 57C-2-23~~ as to the identity of its managers, except to the extent the person has actual knowledge that a person identified therein as a manager is not a manager."

Section 17. G.S. 57C-6-03(a) reads as rewritten:

"(a) The Secretary of State may administratively dissolve a limited liability company if the Secretary of State determines that:

(1) The limited liability company has not paid within 60 days after they are due any penalties, fees, or other payments due under this ~~Chapter;~~ Chapter or G.S. 105-257.1(b);

(2) The limited liability company does not deliver its annual report to the Secretary of ~~State~~ Revenue on or before the date it is due;

(3) The limited liability company has been without a registered agent or registered office in this State for 60 days or more;

(4) The limited liability company has not notified the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) The limited liability company's period of duration stated in its articles of organization has expired."

Section 18. G.S. 57C-7-14(a)(2) reads as rewritten:

"(2) The foreign limited liability company has not delivered its annual report to the Secretary of ~~State~~ Revenue on or before the date it is due;".

Section 19. G.S. 105-228.90(a) reads as rewritten:

"(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this ~~Chapter~~ Chapter, to the annual report filing requirements of G.S. 55-16-22 and G.S. 57C-2-23, and to inspection taxes levied under Article 3 of Chapter 119 of the General Statutes."

Section 20. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-257.1. Secretary to administer annual report filing; fee for limited liability companies.**

(a) Filing Duty. -- The Secretary shall submit the annual reports filed with the Secretary by corporations and limited liability companies pursuant to G.S. 55-16-22 and G.S. 57C-2-23 to the Secretary of State. The penalty in G.S. 105-230 does not apply to the failure to file an annual report required by G.S. 55-16-22 or G.S. 57C-2-23.

(b) Fee. -- A limited liability company shall pay a fee of two hundred dollars ($200.00) to the Secretary of Revenue with its annual report. The fees collected under this subsection shall be credited to the General Fund as tax revenue."

Section 21. G.S. 105-259 reads as rewritten:

"**§ 105-259. (See notes) Secrecy required of officials; penalty for violation.**

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

(1) Employee or officer. -- The term includes a former employee, a former officer, and a current or former member of a State board or commission.

(2) Tax information. -- Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:

a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.

b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.

c. Information on whether a taxpayer has filed a tax return or a tax report.

d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be ~~identified or (ii)~~ identified, (ii) an annual report required to be filed under G.S. 55-16-22 or G.S. 57C-2-23, or (iii) information submitted to the Business License Information Office of the Department of

Secretary of State on a master application form for various business licenses.

(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) Review by a tax official of another state or the Internal Revenue Commissioner of the United States to aid the state or the Commissioner in collecting a tax imposed by this State, the other state, or the United States if the laws of the other state or the United States allow the state or the United States to provide similar tax information to a representative of this State.

(4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.

(5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.

(6) To sort, process, or deliver tax information on behalf of the Department of Revenue.

(6a) To furnish the chair of a board of county commissioners a list of claimants that have received a refund of the county sales or use tax to the extent authorized in G.S. 105- 164.14(f).

(7) To exchange information with the Division of Motor Vehicles of the Department of Transportation when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.

(8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.

(9) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is requested by the Commission in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.

(11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.

(11a) To provide a copy of a return to the taxpayer who filed the return.

(11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.

(11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent.

(12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.

(13) To furnish the Fiscal Research Division of the General Assembly, upon request, a sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information from which taxpayers' names and identification numbers have been removed.

(14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.

(15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

(16) To furnish to the Department of Secretary of State the name, address, <u>tax year end,</u> and account and identification numbers of a corporation liable for corporate income or franchise taxes <u>or of a limited liability company liable for a partnership tax return</u> to enable the Secretary of State to notify the corporation <u>or the limited liability company</u> of the annual report filing requirement or that its articles of incorporation <u>or articles of organization</u> or its certificate of authority has been suspended.

(17) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for

a license for which a tax is imposed and of any information needed to process the application.

(18) To furnish to the Office of the State Controller the name, address, and account and identification numbers of a taxpayer upon request to enable the State Controller to verify statewide vendor files or track debtors of the State.

(19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7.

(c) Punishment. -- A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation."

Section 22. There is appropriated from the General Fund to the Department of Revenue the sum of one hundred ninety-two thousand one hundred fifty-one dollars ($192,151) for the 1997-98 fiscal year, allocated as one hundred twenty-seven thousand seven hundred fifty-one dollars ($127,751) recurring funds and sixty-four thousand four hundred dollars ($64,400) nonrecurring funds, for the costs associated with collecting and transmitting the annual corporate reports.

PART III. EFFECTIVE DATES.

Section 23. (a) Sections 1 through 6 and Sections 21 through 23 of this act become effective July 1, 1997. The remainder of this act becomes effective January 1, 1998, and applies to tax years ending on or after December 31, 1997.

(b) Annual reports erroneously filed with the Secretary of State after December 31, 1997, but before January 1, 1999, shall nevertheless be deemed filed with the correct State agency. The Secretary of State shall notify the Secretary of Revenue of these filings.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
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MEMORANDUM

TO: Senate Commerce Committee

FROM: General Statutes Commission

DATE: February 24, 1997

RE: Senate Bill 158 (Administrative Dissolution/Annual Rept.)

General Comments

This bill is the result of a study assigned to the General Statutes Commission last year by the General Assembly in Chapter 17 of the 1996 Session Laws, Second Extra Session.

As is set forth more fully in the Commission's Report to the 1997 General Assembly of North Carolina on Corporate Reinstatement After Dissolution, filed on or about February 17, 1997, business corporations, nonprofit corporations, and limited liability companies can be administratively dissolved by the Secretary of State for a variety of statutorily fixed reasons. Once dissolved, an entity is required to cease doing business. It can, however, be reinstated by the Secretary of State if it corrects whatever the problem was and applies for reinstatement within two years after administrative dissolution. If it does not act within this two-year grace period, it has no alternative but to wind up its affairs and go out of business, with possible disastrous tax consequences. Experience has shown that the current reinstatement period of two years is too short, although some outside limit is desirable to afford closure to the public records. The Commission concluded that five years was a reasonable period.

The most common reason for administrative dissolution is the failure of a business corporation or limited liability company to file the annual report required of these entities by statute (nonprofit corporations do not file annual reports). Since the early 1990's, the Office of the Secretary of State has been able in this way to remove from its records more than 50,000 abandoned corporations, both clearing the public record and making the names of these corporations available for use by others. In most cases the affected entity was actually abandoned and no longer doing business; it had merely failed to file articles of dissolution. The annual report provides other benefits as well, so the Commission concluded that it should be retained rather than eliminated.

There are, however, a comparatively small but significant number of administrative

dissolutions that are caused by the apparently inadvertent failure of an active entity to file its annual report. In these cases, the entity most commonly failed to file a change of address with the Secretary of State and apparently never received either the annual report form or any notices of dissolution sent it by the Secretary of State, through no fault of the Secretary. Because corporations generally have a higher level of awareness about filing their tax returns than they do about filing annual reports, the Commission concluded that it would virtually eliminate inadvertent failures to file if the Department of Revenue mailed the annual report forms with the appropriate tax forms for entities to return with their tax return. On receipt, the Department of Revenue would transmit the annual reports to the Secretary of State. This procedure would further allow business corporations and limited liability companies the benefit of making a single filing.

Because truly inadvertent filings should be virtually eliminated by having the annual report forms mailed and filed with the appropriate tax forms, the Commission further concurred with a proposal by the Office of the Secretary of State to increase the reinstatement fee. An increased reinstatement fee should serve as an incentive for corporations and limited liability companies to remain in good standing and file the required reports.

Specific Comments

Part I.

Sections 1 through 3 amend G.S. 55-14-22, 55A-14-22, and 57C-6-03, respectively, to extend the grace period for reinstatement from two to five years for business corporations, nonprofit corporations, and limited liability companies.

Sections 4 and 5 amend G.S. 55-1-22 and 55A-1-22, respectively, to increase the reinstatement fee from $25 to $200 per year for business corporations and nonprofit corporations. Section 4 also makes a stylistic change to G.S. 55-1-22 to make the reference to the Secretary of State gender neutral. Section 6 amends G.S. 57C-1-22 to add a reinstatement fee in the amount of $200 per year for limited liability companies.

Part II.

Section 7 amends G.S. 55-16-22 (i) to require a business corporation to file its annual report with the Secretary of Revenue rather than the Secretary of State, (ii) to delete the requirement that the names of directors be included in the report, on the basis that this information is not truly useful to the public, (iii) to explicitly allow a corporation to certify that there are no changes from the previous annual report and eliminate the burden of filling out repetitious reports, and (iv) to tie the due date of a corporation's annual report to the due date of its tax return. Amendments to annual reports continue to be filed with the Secretary of State.

Please note that the issues reflected in proposed new subsections 55-16-22(f) and (g) were raised by the Office of the Secretary of State after the Commission last met, and accordingly it has

not had the opportunity of reviewing these proposed new subsections.

Section 9 amends G.S. 55-1-22 to delete the ten dollar fee currently collected by the Secretary of State for filing an annual report.

Sections 8 and 10 through 13 make conforming amendments to other sections of Chapter 55 of the General Statutes to reflect the filing of annual reports with the Secretary of Revenue rather than the Secretary of State.

Sections 14 through 18 make equivalent amendments to comparable sections of Chapter 57C of the General Statutes, dealing with limited liability companies.

Section 19 makes a conforming amendment to G.S. 105-228.90, in the chapter of the General Statutes dealing with the Department of Revenue, to reflect the filing of annual reports with the Secretary of Revenue.

Section 20 adds a new Section, G.S. 105-257.1, to Chapter 105 of the General Statutes requiring the Secretary of Revenue to transmit the annual reports to the Secretary of State. It also transfers payment of the annual report filing fee of $200 currently paid by limited liability companies from the Secretary of State to the Secretary of Revenue. This fee is not truly a mere filing fee but is a substitute for a franchise tax and should be continued.

Section 21 amends G.S. 105-259 to specify that annual reports are not tax information and to allow the Secretary of Revenue to provide the Secretary of State with an entity's end of tax year date. This Section also makes a conforming amendment to recognize the existence of limited liability companies.

Section 22 makes a appropriation to carry out the transfer of function from the Secretary of State to the Secretary of Revenue. The amount of the appropriation was submitted by the Department of Revenue, since the General Statutes Commission lacks the expertise to determine an appropriate amount independently of the Department.

Part III.

Section 23 contains effective date and applications provisions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 163

Short Title: Securities Transfer on Death. (Public)

Sponsors: Senators Hartsell, Odom; and Carpenter.

Referred to: Commerce.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by rewriting the title of Chapter 41 to read "Estates and Interests in Property", and Chapter 41 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4.

"The Uniform Transfer on Death (TOD) Security Registration Act.

"**§ 41-40. Definitions.**

In this Article, unless the context otherwise requires:

(1) 'Beneficiary form' means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) 'Devisee' means any person designated in a will to receive a disposition of real or personal property.

(3) 'Heirs' means those persons, including the surviving spouse, who are entitled under Chapter 29 of the General Statutes or the statutes of intestate succession of other states to take the property of a decedent by intestate succession.

(4) 'Person' means an individual, a corporation, an organization, or other legal entity.

(5) 'Personal representative' includes executor, administrator, collector, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) 'Property' includes both real and personal property or any interest in real or personal property and means anything that may be the subject of ownership.

(7) 'Register', including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) 'Registering entity' means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) 'Security' means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(10) 'Security account' means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

"§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

"§ 41-42. Registration in beneficiary form; applicable law.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its

office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

"**§ 41-43. Origination of registration in beneficiary form.**

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

"**§ 41-44. Form of registration in beneficiary form.**

Registration in beneficiary form may be shown by the words 'transfer on death' or the abbreviation 'TOD', or by the words 'pay on death' or the abbreviation 'POD', after the name of the registered owner or owners and before the name of a beneficiary.

"**§ 41-45. Effect of registration in beneficiary form.**

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership of the security until the owner's death. A registration of a security in beneficiary form may be cancelled or changed at any time by the sole owner or all then-surviving owners, without the consent of the beneficiary.

"**§ 41-46. Ownership on death of owner.**

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survive the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

"**§ 41-47. Protection of registering entity.**

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this Article.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this Article.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii) on this Article, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the

registering entity. The protections of this Article do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this Article.

(d) The protection provided by this Article to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

"**§ 41-48. Nontestamentary transfer on death.**

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this Article and is not testamentary.

(b) The interest of a deceased owner when there are one or more surviving owners, remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the surviving owner or owners when the decedent's estate is insufficient to satisfy the debts. The interest of a deceased sole owner, or the last to die of several owners, remains liable for the debts of the decedent in the same manner as the personal property included in the decedent's estate, and recovery of that interest shall be made from the TOD beneficiary when the decedent's estate is insufficient to satisfy the debts.

(c) Nothing in this Article shall be construed to repeal or modify any provision of Article 1 of Chapter 105 of the General Statutes relating to the administration of the inheritance tax laws of this State or any other law relating to inheritance taxes.

"**§ 41-49. Terms, conditions, and forms for registration.**

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions established may provide for proving death, avoiding or resolving any problems concerning fractional shares, and designating primary and contingent beneficiaries. Forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: 'John S. Brown TOD (or POD) John S. Brown, Jr.'

(2) Multiple owners-sole beneficiary: 'John S. Brown, Mary B. Brown JT TEN TOD John S. Brown, Jr.'

(3) Multiple owners-primary and secondary (substituted) beneficiaries: 'John S. Brown, Mary B. Brown JT TEN TOD John S. Brown, Jr. SUB BENE Peter Q. Brown'.

"§ 41-50. Short title; rules of construction.

(a) This Article shall be known as and may be cited as the 'Uniform TOD Security Registration Act'.

(b) This Article shall be applied and construed to effectuate its general purposes and to make uniform the laws with respect to the subject of this Article among states enacting it.

(c) This Article does not repeal G.S. 41-2.2.

"§ 41-51. Application of Article.

This Article applies to registrations of securities in beneficiary form made before, on, or after the effective date of this Article, by decedents dying on or after the effective date of this Article."

Section 2. G.S. 28A-15-10(a) reads as rewritten:

"(a) When needed to satisfy claims against a decedent's estate, assets may be acquired by a personal representative or collector from the following sources:

(1) Tentative trusts created by the decedent in savings accounts for other ~~persons;~~ persons.

(2) Gifts causa mortis made by the ~~deceedent;~~ decedent.

(3) Joint deposit accounts with right of survivorship created by decedent pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint tenancies with right of survivorship created by decedent in corporate stocks or other investment securities.

(4) An interest in a security passing to a beneficiary pursuant to the provisions of Article 4 of Chapter 41 of the General Statutes.

Such assets shall be acquired solely for the purpose of satisfying such claims, however, and shall not be available for distribution to heirs or devisees."

Section 3. If the 1997 General Assembly enacts Senate Bill 87 or House Bill 134, G.S. 41-40(9), as enacted by this act, reads as rewritten:

"(9) 'Security' means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, ~~and~~ a security ~~account.~~ account, and a security entitlement as defined in G.S. 25-8-102."

Section 4. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform TOD Security Registration Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Section 5. This act is effective when it becomes law, except that Section 3 of this act becomes effective on the later of the effective dates of this act or House Bill 134 or Senate Bill 87.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
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MEMORANDUM

TO: Senate Commerce Committee

FROM: General Statutes Commission

DATE: February 21, 1997

RE: Senate Bill 163 (Securities Transfer on Death)

General Comments

Senate Bill 163 enacts the Uniform TOD (Transfer on Death) Security Registration Act, which was officially adopted by the National Conference of Commissioners on Uniform State Laws in 1989 and subsequently reviewed by the General Statutes Commission and its Trusts Drafting Committee. The Act permits the owner of an investment security (that is, stocks, bonds, mutual fund shares, security accounts, etc.) to designate another person to become owner of the security when the present owner dies, in a manner similar to insurance policies. The designation is completely revocable until the death of the owner, and it eliminates the need for probate of that particular security. Estate or inheritance tax liability is not affected. The Uniform Act is endorsed by the American Bar Association and the American Association of Retired Persons and has been enacted in at least 28 states.

The Act offers owners of securities two significant advantages over the use of a joint tenancy when the owner wants nothing more than a nonprobate means of transfering ownership on death. The person named as TOD beneficiary has no ownership interest or right of control during the lifetime of the owner. Therefore, there are no income tax or gift tax consequences and the owner does not risk having the joint tenant cash the security and make off with the proceeds.

Please note that securities issuers and transfer agents with principal offices in states that have already enacted the Act are accepting securities registered in TOD form even from residents of states that have not enacted the Act.

Please note also the following specific points:

(1) Only a sole owner or multiple owners with right of survivorship can use the TOD registration process. The only type of multiple ownership with right of survivorship that can be created in a normal investment security under North Carolina law is a joint tenancy

with right of survivorship, although other types can be created in other states. Tenants in common cannot use the TOD designation. This limitation is found in the Uniform Act itself and is designed to prevent conflicting or divided beneficiary designations.

(2) The designated beneficiary or beneficiaries "take" on the death of the sole owner or the last surviving joint tenant. Multiple beneficiaries "take" as tenants in common.

(3) An issuer or transfer agent is not required to accept TOD designations and may establish the terms and conditions under which it will receive TOD registrations.

(4) This bill differs from the Uniform Act in four respects. First, it includes in the definition of "heirs" a specific citation to North Carolina's intestate succession statutes. Second, it includes in § 41-48 two subsections, (b) and (c), not found in the Uniform Act that are designed to protect the interest of creditors and the Department of Revenue. These provisions are modelled on G.S. 41-2.2(c) and (d) and are similar to other provisions dealing with nontestamentary transfers on death such as joint bank accounts. Third, it omits an illustration and supporting language from § 41-49 that would have defined a particular, commonly used legal term ("per stirpes") in a way different from the usual meaning in this State, thereby avoiding a trap for the unwary. Fourth, it includes in § 41-50 a subsection (c) stating that the Act does not repeal G.S. 41-2.2 to avoid any argument that that section was partially repealed by implication.

Section 2 of the bill makes a conforming change to G.S. 28A-15-10(a), dealing with rights of creditors. Section 3 makes an amendment to the definition of "security" that will be needed if the proposed revision of Article 8 of the Uniform Commercial Code is enacted during this session, and Section 4 authorizes the printing of official and drafters' comments.

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Legislative Services Agency

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February 25, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 163 - SECURITIES TRANSFER ON DEATH** - Senator Hartsell.

Senate Bill 163 would amend Chapter 41 - **Estates**, to provide for a method to transfer securities to a beneficiary upon death based on a prior beneficiary designation by registration.

Senate Bill 163 is a recommendation of the General Statutes Commission and is modeled after the Uniform Transfer on Death (TOD) Securities Registration Act. The Uniform Act has been adopted in at least 28 other states.

Under Section 1 of this bill the owner of securities, which are defined to include stocks, bonds, mutual fund shares and security accounts, would be permitted to designate a beneficiary of the securities to be received upon the death of the owner. This designation could be revoked or modified by the owner anytime up until death. Also this designation does not convey any right or interest in the beneficiary until the time of death. Title to the securities would be transferred as a matter of contract (like life insurance policies or individual retirement accounts), not as a testamentary bequest, and as such would not be part of the probate estate.

Some of the advantages provided by the bill appear to be: 1) provides an alternative to joint ownership with right of survivorship, avoiding the complications and restrictions of dealing with a co-owner but effecting the same transfer upon death; 2) avoids probate and probate fees; and 3) simplifies the process of changing names on securities after death. The bill makes if clear that this act does not affect claims of creditors, who can still claim these securities if necessary to satisfy claims against the decedent's estate in the same ways as with joint bank accounts with right of survivorship. The bill also makes it clear that this form of ownership does not affect estate or inheritance tax collection and that these securities would be counted as part of the taxable estate.

One change that would result from this bill would be a reduction in the collection of probate fees by the clerks of court. Probate fees of $4.00 per $1,000 are

collected on all personal property which passes through the probate estate. Because these changes would transfer these securities outside the probate estate, probate fees would not be collected on the value of the securities transferred by this method.

Section 2 of this bill makes a conforming change to the statute governing the rights of creditors to collect estate debts from assets passing outside the estate. This statute is only triggered when other assets of the estate are insufficient to satisfy all claims.

Section 3 would make a conforming change in the definition of "security" in another bill currently being considered in the 1997 General Assembly if that bill becomes law.

Section 4 authorizes the Revisor of Statutes to include the Official Comments to the Uniform Act from the Uniform Commissioners with the published statutes.

The bill becomes effective when it becomes law and applies to persons dying on or after that date who had registered such a designation on their securities at anytime prior to their death. This will ratify the designations made by people prior to the effective date of this act, including people who may have made such designations under the laws of other states.

VISITOR REGISTRATION SHEET

Commerce Committee — March 4, 1997
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Christie Barbee	CHPA
Patricia A. Garvey	SCSL
Jan Johnson	Ally
Jim Adler	NCACPA
Britt Bonnell	NCSDA
Paul Crissman	EHNR
Tommy Herrelson	Weyerhaeuser
Charles Hawkins	DOR
[illegible]	DOR
[illegible]	DEHNR Solid Waste Section
Ed Regan	N.C.A.C.C.
[illegible]	CP&L

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ken Kinion	American General
Elaine Hardee	Szyzygy Communications
Amanda Digby	NC Academy of Trial Lawyers
Scott Mann	EHNR
Lucius Pullen	ATTORNEY
Charles J. Murray	General Statutes Commission
Amy Jo Bain	Smith Anderson
Angie Harris	Commerce
Charlene Dewkins	Dept of State
David D. Thomas	SEC. OF STATE
Leonard Allen	Dept of State
Paula Dupla	NC FB

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
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David Simmons	Bob Alley, PA
Bill McAulay	PSNC
STUART DIXON	N. C. NATURAL GAS CORP
Frank Froom	Gov. Hunt's office
Colon Willoughby	D.A.'s Office
Robert W Kaylor	Kaylor Law Firm
John McAlister	Duke Power
R Rogers	FANR
John McMillan	Manning, Fulton & Skinner
Laura Hartsell	

MINUTES
SENATE COMMERCE COMMITTEE
March 11, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, March 11, 1997. Nineteen members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator Soles called the meeting to order.

The following bills were considered by the Committee:

S. B. 31, AN ACT TO MAKE CONFORMING CHANGES TO THE LP GAS STATUTE. Senator Jordan, the bill sponsor, explained the bill which was a recommendation of the LRC Consumer Protection Study Committee. The purpose of the legislation is to remove the prohibition against unvented gas heaters in manufactured homes and in the bedroom of a home. (See attached memorandum for additional information.) Senator Jordan submitted an amendment (copy attached.) and moved its adoption. Motion carried.

Senator Ballentine moved that a Committee Substitute for S. B. 31, incorporating the changes made by the amendment, be adopted. Motion carried.

S. B. 23, AN ACT TO REQUIRE THAT EVERY DWELLING UNIT LEASED AS RENTAL PROPERTY IN CERTAIN CITIES BE FURNISHED WITH A SOURCE OF HEAT. Senator Reeves was recognized to explain the bill. The legislation requires that every dwelling unit in a city of 200,000 or more that is leased as rental property must have at least one heated habitable room other than the kitchen. (See attached memorandum for additional information.) Several members spoke in support of the bill, and Senator Kerr raised a question with regard to penalty provisions. Senator Larry Shaw moved that S. B. 23 be given a favorable report. Motion carried.

S. B. 233, AN ACT TO EXPAND THE DEFINITION OF CONSUMER WITHIN THE MEANING OF THE LAW PROHIBITING CERTAIN ACTS BY DEBT COLLECTORS. Senator Reeves said the bill amends the definition of "consumer" under the debt collection acts statute by expanding the definition from "natural person" to include "individuals, firms, associations, partnerships, joint stock companies,

corporations, trusts, estates and other legal entities." (See attached memorandum for further clarification of the bill.)

Mr. Paul Stock with the North Carolina Bankers Association said the Association had some concerns about the bill and would like an opportunity to work with the sponsor on some possible changes.

Senator Soles appointed a subcommittee on S. B. 233 consisting of Senators Lee, Chairman, Senators Ballentine and Dalton.

C. S. for H. B. 29, AN ACT TO INCREASE THE MAXIMUM RAFFLE CASH PRIZES AND THE FAIR MARKET VALUE OF RAFFLE MERCHANDISE PRIZES. Representative Baker, the bill sponsor, spoke on the bill. He said it doubles the maximum prize amount that may be awarded in a raffle by a nonprofit organization. (See attached memorandum for further explanation.) Senator Cochrane moved that C. S. for House Bill 29 be given a favorable report. Motion carried.

There being no further business, the meeting adjourned at 11:50 a.m.

Senator R. C. Soles, Jr., Chairman

Mrs. Joan R. Leatherman
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, March 12, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **29** Raffle Limits Upped.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **31** Amend LP Gas Code.
Draft Number: PCS8570
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 31

Short Title: Amend LP Gas Code. (Public)

Sponsors: Senator Jordan.

Referred to: Commerce.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING CHANGES TO THE LP GAS STATUTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 119-58 reads as rewritten:

"**§ 119-58. Unlawful acts.**

(a) It shall be an unlawful act for any person to:

(1) Sell any liquified petroleum gas burning appliance designed or built for domestic use which has not been approved by the American Gas Association, Inc., the Underwriters Laboratory, Inc., or other laboratory approved by the ~~Commissioner of Agriculture.~~ North Carolina Building Code Council. This subdivision shall not apply to appliances regulated under the North Carolina Building Code;

~~(2) Install any unvented space heating appliance in a manufactured home as defined in G.S. 143-145(7)~~

~~(3) Install any unvented space heating appliance in a sleeping room that has an input of over 30 BTU per cubic feet of enclosure;~~

(4) Fill a consumer tank or container in excess of 85 percent (85%) of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a fill tube or gauge; provided, ~~said~~ the tank or container may be filled by weight if the tank or container is weighed before and after filling;

(5) Disconnect an appliance from a gas supply line without capping or plugging ~~said~~ the line before leaving the premises;

(6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas outlets;

(7) Violate any provisions of this Article or any rules and regulations promulgated thereunder.

(b) Every supply tank or container with its regulating equipment connected in a service system, shall be identified while in service by the supplier with an attached tag, label or other marking that includes the name of the person supplying liquefied petroleum gas to ~~said~~ the system, and it shall be unlawful for any person, other than ~~said~~ the supplier or the owner of the system, to disconnect, interrupt or fill ~~said~~ the system with liquefied petroleum gas without the consent of ~~said~~ the supplier. Provided, if another registered supplier is requested by the consumer to connect his service and is given permission by the consumer to do so, the new supplier shall notify the former supplier before disconnecting the former service and connecting the new service and shall cap or plug all disconnected equipment outlets and leave ~~said~~ the equipment in a condition consistent with this Article and the rules and regulations promulgated thereunder."

Section 2. This act is effective when it becomes law and applies to appliances installed on and after that date.

adopted
3-11-97

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 31

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

S31-ARN-001

Date _____, 1997

Comm. Sub. []
Amends Title []
First Edition

Senator _____

moves to amend the bill on page 1, line 15 by deleting "~~G.S. 143-145(7)~~" and inserting "~~G.S. 143-145(7);~~";

and on page 2, lines 17-18, by rewriting those lines to read:

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

SENATE
COMMITTEE SUBSTITUTE
MAR 12 1997
ADOPTED

S

SENATE BILL 31
Proposed Committee Substitute S31-PCS8570

Short Title: Amend LP Gas Code. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

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~~(3) Install any unvented space heating appliance in a sleeping room that has an input of over 30 BTU per cubic feet of enclosure;~~

(4) Fill a consumer tank or container in excess of 85 percent (85%) of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a fill tube or gauge; provided, ~~said~~ the tank or container may be filled by weight if the tank or container is weighed before and after filling;

(5) Disconnect an appliance from a gas supply line without capping or plugging ~~said~~ the line before leaving the premises;

(6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas outlets;

(7) Violate any provisions of this Article or any rules and regulations promulgated thereunder.

(b) Every supply tank or container with its regulating equipment connected in a service system, shall be identified while in service by the supplier with an attached tag, label or other marking that includes the name of the person supplying liquefied petroleum gas to ~~said~~ the system, and it shall be unlawful for any person, other than ~~said~~ the supplier or the owner of the system, to disconnect, interrupt or fill ~~said~~ the system with liquefied petroleum gas without the consent of ~~said~~ the supplier. Provided, if another registered supplier is requested by the consumer to connect his service and is given permission by the consumer to do so, the new supplier shall notify the former supplier before disconnecting the former service and connecting the new service and shall cap or plug all disconnected equipment outlets and leave ~~said~~ the equipment in a condition consistent with this Article and the rules and regulations promulgated thereunder."

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

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February 20, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 31 (Amend LP Gas Code)

Senate Bill 31 is a recommendation of the LRC Consumer Protection Study Committee. The bill removes the prohibition against unvented gas heaters in manufactured homes. It also removes the prohibition against unvented gas heaters in the bedroom of a home. These laws were put on the books back in the 1950s and early 1960s at a time when the Department of Agriculture had sole regulatory jurisdiction for all LP gas appliances. Within the last ten years or so, jurisdiction over heating appliances inside homes has been shifted to the Building Code Council and jurisdiction over heating appliances inside manufactured homes has shifted to the Manufactured Housing Board. Both the Council and the Board are administratively assigned to the Department of Insurance.

It is my understanding that the Building Code Council and the Manufactured Housing Board, acting under their jurisdiction over heating appliances inside the home, already allow unvented gas heaters in the homes, but not in the bedrooms. By repealing subdivisions (2) and (3) of G.S. 119-58(a), the bill will allow the Building Code Council and the Manufactured Housing Board to also authorize unvented gas heaters in bedrooms. The repeal of subdivision (2) also recognizes that unvented gas heaters are already allowed in portions of a manufactured home.

The bill takes effect when it becomes law.

S31-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 23

Short Title: Require Rental Property Heat. (Public)

Sponsors: Senators Reeves; Martin of Guilford and Miller.

Referred to: Commerce.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT EVERY DWELLING UNIT LEASED AS RENTAL PROPERTY IN CERTAIN CITIES BE FURNISHED WITH A SOURCE OF HEAT.

The General Assembly of North Carolina enacts:

Section 1. (a) By January 1, 1998, every dwelling unit leased as rental property shall have a central heating system or sufficient chimneys, flues, or gas vents, with heating appliances connected, so as to heat at least one habitable room, excluding the kitchen, to a minimum temperature of 68 degrees Fahrenheit measured three feet above the floor with an outside temperature of 20 degrees Fahrenheit.

(b) All heating systems and appliances shall be installed and maintained in a good and safe working condition by the owner of the dwelling unit.

(c) Portable kerosene heaters are not acceptable as a permanent source of heat as required by subsection (a) of this section, but may be used as a supplementary source in single family dwellings and duplex units. An owner who has complied with subsection (a) shall not be held in violation of this section where an occupant of a dwelling unit uses a kerosene heater as a primary source of heat.

(d) This section only applies to cities with a population of 200,000 or over, according to the most recent decennial federal census.

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

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February 20, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 23 (Require Rental Property Heat)

Senate Bill 23 requires that every dwelling unit in a city of 200,000 or more that is leased as rental property must have at least one heated habitable room other than the kitchen. The source of the heat must be a central heating system or sufficient chimneys, flues, or gas vents, with heating appliances connected. The heat source must be capable of heating the room to a temperature of 68 degrees Farenheit.

The owner of the dwelling unit must ensure that the heating appliances work and are properly maintained. If the owner of a single-family dwelling or duplex provides the heat in accordance with this act and the tenant uses a portable kerosene heater instead as the primary source of heat, the owner is not liable.

This bill only applies to cities with a population of 200,000 or more, based on the most recent census. Under the most recent census (1990), only Charlotte and Raleigh would be covered by this bill.

This bill would take effect upon becoming law.

S23-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

THE NEWS&OBSERVER
Wednesday
March 12, 1997

Back to North Carolina

Under the DOME

Dome: Heating measure gains steam

Raleigh Sen. Eric Reeves scored his first legislative victory Tuesday when his rental heating bill made it out of the Senate Commerce Committee.

The Democrat and former Raleigh City Council member is sponsoring a bill that would require landlords in cities of more than 200,000 people to provide heat to tenants. The bill requires that landlords provide heat in one room.

If passed, the proposed law would apply only to Raleigh because Charlotte already has a rental heating ordinance.

The bill received a sympathetic hearing from both Democratic and Republican lawmakers. It still has to win approval in the Democrat-controlled Senate and get the nod from the Republican-controlled House before it becomes law.

"I like your bill and I'm going to support it," said Rep. Bob Shaw, a Greensboro Republican. "I think every human being should be able to sleep warm."

Sen. Donald Kincaid, a Lenoir Republican, wasn't so sure.

Kincaid told committee members that people should know before they decide to rent whether or not an apartment or home has heat. And he suggested adding a provision that would make it easier for landlords to evict tenants who don't pay the rent.

"I don't own any rental property, don't know any slumlords," Kincaid said. "Don't think we have any slumlords in Lenoir. Don't you think we need to keep this rental/tenant situation sort of balanced?"

Reeves agreed that the relationship is out of balance -- with landlords holding sway over low-income tenants who have little to no choice when it comes to finding affordable housing.

"This legislative building sits within the area of the highest concentration of non-heated housing in Raleigh," Reeves said. "It's about 300 yards from here."

Sen. Howard Lee, a Chapel Hill Democrat, argued for expanding the bill to include smaller cities. But Sen. Frank Ballance, a Warrenton Democrat, said such a move would make it hard for the bill to win final approval.

Penalties for landlords who violate the proposed law are still being worked out.

Reeves -- who tried to get a rental heating ordinance passed when he was on the Raleigh City Council -- said he would be open to expanding the bill.

"This bill deals with something that is a basic need, a basic requirement, which is, should these places have heat or not," Reeves said. "Except for slumlords, this requirement will not impact the garden-variety rental unit."

[TRIANGLE | NORTH CAROLINA *NORMAL* | NORTH CAROLINA *LOW* | SPORTS | BUSINESS | EDITORIAL |]

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Feedback: The N&O staff

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 233

Short Title: Scope/Acts of Debt Collectors. (Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE DEFINITION OF CONSUMER WITHIN THE MEANING OF THE LAW PROHIBITING CERTAIN ACTS BY DEBT COLLECTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75-50 reads as rewritten:

"**§ 75-50. Definitions.**

The following words and terms as used in this Article shall be construed as follows:

(1) 'Consumer' means any ~~natural person who~~ individual, firm, association, partnership, joint stock company, corporation, trust, estate, or other legal entity that has incurred a debt or alleged ~~debt for personal, family, household or agricultural purposes.~~ debt.

(2) 'Debt' means any obligation owed or due or alleged to be owed or due from a consumer.

(3) 'Debt collector' means any person engaging, directly or indirectly, in debt collection from a consumer except those persons subject to the provisions of Article 70, Chapter 58 of the General Statutes."

Section 2. This act becomes effective October 1, 1997, and applies to any violations of Article 2 of Chapter 75 of the General Statutes that occur on or after that date.

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March 11, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **Senate Bill 233 - Scope of Acts of Debt Collectors** - Senator Reeves

Senate Bill 233 would amend the Prohibited Acts by Debt Collectors to include collection actions taken against entities other than natural persons.

The bill amends the definition of "consumer" under the debt collection acts statute by expanding the definition from "natural person" to include "individuals, firms, associations, partnerships, joint stock companies, corporations, trusts, estates and other legal entitles". Under this bill debt collection practices which are currently prohibited against individuals would also be prohibited against legal persons, including businesses and corporations.

Article 2 of Chapter 75 sets out various methods of debt collection which are prohibited including prohibitions against certain forms of threats and coercion (G.S. 75-51), harassment (G.S. 75-52), unreasonable publication (G.S. 75-53), deceptive representation (G.S. 75-54), and unconscionable means (G.S. 75-55). Violations of these prohibitions constitute unfair or deceptive trade practices subjecting the violator to treble damages and attorneys fees under G.S. 75-16 and 75-16.1. (See copies attached).

Article 2 applies to all debt collection except debt collection conducted by collection agencies governed by Article 70 of Chapter 58. Under G.S. 58-70-90(2), "consumer" is defined to include "**an individual, aggregation of individuals, corporation, company, association, or partnership**". Article 70 also prohibits the exact same conduct as prohibited by Article 2. This bill would make the definition of "consumer" under Article 2 of Chapter 75 very similar to the definition of "consumer" under Article 70 of Chapter 58.

The bill would become effective October 1, 1997 and would apply to violations that occur on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

ARTICLE 2, CHAPTER 75

PROHIBITED ACTS BY DEBT COLLECTORS

§ 75-50. Definitions.

The following words and terms as used in this Article shall be construed as follows:

(1) "Consumer" means any natural person who has incurred a debt or alleged debt for personal, family, household or agricultural purposes.

(2) "Debt" means any obligation owed or due or alleged to be owed or due from a consumer.

(3) "Debt collector" means any person engaging, directly or indirectly, in debt collection from a consumer except those persons subject to the provisions of Article 70, Chapter 58 of the General Statutes. (1977, c. 747, s. 4; 1989, c. 770, s. 15.)

§75-51. Threats and coercion.

No debt collector shall collect or attempt to collect any debt alleged to be due and owing from a consumer by means of any unfair threat, coercion, or attempt to coerce. Such unfair acts include, but are not limited to, the following:

(1) Using or threatening to use violence or any illegal means to cause harm to the person, reputation or property of any person.

(2) Falsely accusing or threatening to accuse any person of fraud or any crime, or of any conduct that would tend to cause disgrace, contempt or ridicule.

(3) Making or threatening to make false accusations to another person, including any credit reporting agency, that a consumer has not paid, or has willfully refused to pay a just debt.

(4) Threatening to sell or assign, or to refer to another for collection, the debt of the consumer with an attending representation that the result of such sale, assignment or reference would be that the consumer would lose any defense to the debt or would be subjected to harsh, vindictive, or abusive collection attempts.

(5) Representing that nonpayment of an alleged debt may result in the arrest of any person.

(6) Representing that nonpayment of an alleged debt may result in the seizure, garnishment, attachment, or sale of any property or wages unless such action is in fact contemplated by the debt collector and permitted by law.

(7) Threatening to take any action not in fact taken in the usual course of business, unless it can be shown that such threatened action was actually intended to be taken in the particular case in which the threat was made.

(8) Threatening to take any action not permitted by law. (1977, c. 747, s. 4.)

§75-52. Harassment.

No debt collector shall use any conduct, the natural consequence of which is to oppress, harass, or abuse any person in connection with the attempt to collect any debt. Such unfair acts include, but are not limited to, the following:

(1) Using profane or obscene language, or language that would ordinarily abuse the typical hearer or reader.

(2) Placing collect telephone calls or sending collect telegrams unless the caller fully identifies himself and the company he represents.

(3) Causing a telephone to ring or engaging any person in telephone conversation with such frequency as to be unreasonable or to constitute a harassment to the person under the circumstances or at times known to be times other than normal waking hours of the person.

(4) Placing telephone calls or attempting to communicate with any person, contrary to his instructions, at his place of employment, unless the debt collector does not have a telephone number where the consumer can be reached during the consumer's nonworking hours. (1977, c. 747, s. 4.)

§75-53. Unreasonable publication.

No debt collector shall unreasonably publicize information regarding a consumer's debt. Such unreasonable publication includes, but is not limited to, the following:

(1) Any communication with any person other than the debtor or his attorney, except:
   a. With the written permission of the debtor or his attorney given after default;
   b. To persons employed by the debt collector, to a credit reporting agency, to a person or business employed to collect the debt on behalf of the creditor, or to a person who makes a legitimate request for the information;
   c. To the spouse (or one who stands in place of the spouse) of the debtor, or to the parent or guardian of the debtor if the debtor is a minor and lives in the same household with such parent;
   d. For the sole purpose of locating the debtor, if no indication of indebtedness is made;
   e. Through legal process.

(2) Using any form of communication which ordinarily would be seen or heard by any person other than the consumer that displays or conveys any information about the alleged debt other than the name, address and phone number of the debt collector except as otherwise provided in this Article.

(3) Disclosing any information relating to a consumer's debt by publishing or posting any list of consumers, except for credit reporting purposes and the publication and distribution of otherwise permissible "stop lists" to the point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through legal process. (1977, c. 747, s. 4; 1979, c. 910.)

§75-54. Deceptive representation.

No debt collector shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

(1) Communicating with the consumer other than in the name (or unique pseudonym) of the debt collector and the person or business on whose behalf the debt collector is acting or to whom the debt is owed.

(2) Failing to disclose in all communications attempting to collect a debt that the purpose of such communication is to collect a debt.

(3) Falsely representing that the debt collector has in his possession information or something of value for the consumer.

(4) Falsely representing the character, extent, or amount of a debt against a consumer or of its status in any legal proceeding; falsely representing that the collector is in any way connected with any agency of the federal, State or local government; or falsely representing the creditor's rights or intentions.

(5) Using or distributing or selling any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source.

(6) Falsely representing that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges.
(7) Falsely representing the status or true nature of the services rendered by the debt collector or his business. (1977, c. 747, s. 4.)

§75-55. Unconscionable means.

No debt collector shall collect or attempt to collect any debt by use of any unconscionable means. Such means include, but are not limited to, the following:

(1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver.
(2) Collecting or attempting to collect from the consumer all or any part of the debt collector's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge.
(3) Communicating with a consumer (other than a statement of account used in the normal course of business) whenever the debt collector has been notified by the consumer's attorney that he represents said consumer.
(4) Bringing suit against the debtor in a county other than that in which the debt was incurred or in which the debtor resides if the distances and amounts involved would make it impractical for the debtor to defend the claim. (1977, c. 747, s. 4.)

§ 75-56. Application.

The specific and general provisions of this Article shall exclusively constitute the unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce regulated by this Article. Notwithstanding the provisions of G.S. 75-15.2 and 75-16, in private actions or actions instituted by the Attorney General, civil penalties in excess of two thousand dollars ($2,000) shall not be imposed, nor shall damages be trebled for any violation under this Article. (1977, c. 747, s. 4; 1983, c. 417, s. 1; 1985 (Reg. Sess., 1986), c. 802; 1991, c. 68, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 29
Committee Substitute Favorable 2/12/97
Third Edition Engrossed 2/25/97

Short Title: Raffle Limits Upped. (Public)

Sponsors:

Referred to:

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MAXIMUM RAFFLE CASH PRIZES AND THE FAIR MARKET VALUE OF RAFFLE MERCHANDISE PRIZES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-309.15(d) reads as rewritten:

"(d) The maximum cash prize that may be offered or paid for any one raffle is ~~five thousand dollars ($5,000)~~ ten thousand dollars ($10,000) and if merchandise is used as a prize, and it is not redeemable for cash, the maximum fair market value of that prize may be ~~twenty-five thousand dollars ($25,000).~~ fifty thousand dollars ($50,000). No real property may be offered as a prize in a raffle. The total cash prizes offered or paid by any nonprofit organization or association may not exceed ten thousand dollars ($10,000) in any calendar year. The total fair market value of all prizes offered by any nonprofit organization or association, either in cash or in merchandise that is not redeemable for cash, may not exceed fifty thousand dollars ($50,000) in any calendar year."

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

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March 11, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr.
Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: House Bill 29 (3rd Ed.) (Raffle Limits Upped)

House Bill 29 doubles the maximum prize amount that may be awarded in a raffle by a nonprofit organization. The bill increases the maximum allowable cash prize from $5,000 to $10,000 and the maximum allowable merchandise prize from a $25,000 to a $50,000 value. The bill also limits the total cash prizes that can be awarded through raffles by the nonprofit organization in a calendar year to $10,000 and the total prizes, cash or otherwise, to $50,000.

Raffles are limited by law to tax-exempt nonprofit organizations. An organization can conduct no more than two raffles in a calendar year period.

The bill takes effect upon becoming law.

H29-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 14-309.15. Raffles.

(a) **(Effective until January 1, 1995)** It is lawful for any nonprofit organization or association, recognized by the Department of Revenue as tax-exempt pursuant to G.S. 105-130.11(a), to conduct raffles in accordance with this section. Any person who conducts a raffle in violation of any provision of this section shall be guilty of a misdemeanor under G.S. 14-292 and shall be punished in accordance with G.S. 14-3. Upon conviction that person shall not conduct a raffle for a period of one year. It is lawful to participate in a raffle conducted pursuant to this section. It shall not constitute a violation of State law to advertise a raffle conducted in accordance with this section. A raffle conducted pursuant to this section is not "gambling".

(a) **(Effective January 1, 1995)** It is lawful for any nonprofit organization or association, recognized by the Department of Revenue as tax-exempt pursuant to G.S. 105-130.11(a), to conduct raffles in accordance with this section. Any person who conducts a raffle in violation of any provision of this section shall be guilty of a Class 2 misdemeanor. Upon conviction that person shall not conduct a raffle for a period of one year. It is lawful to participate in a raffle conducted pursuant to this section. It shall not constitute a violation of State law to advertise a raffle conducted in accordance with this section. A raffle conducted pursuant to this section is not "gambling".

(b) For purposes of this section "raffle" means a game in which the prize is won by random drawing of the name or number of one or more persons purchasing chances.

(c) Raffles shall be limited to two per nonprofit organization per year.

(d) The maximum cash prize that may be offered or paid for any one raffle is five thousand dollars ($5,000) and if merchandise is used as a prize, and it is not redeemable for cash, the maximum fair market value of that prize may be twenty-five thousand dollars ($25,000). No real property may be offered as a prize in a raffle.

(e) Raffles shall not be conducted in conjunction with bingo.

(f) As used in this subsection, "net proceeds of a raffle" means the receipts less the cost of prizes awarded. No less than ninety percent (90%) of the net proceeds of a raffle shall be used by the nonprofit organization or association for charitable, religious, educational, civic, or other nonprofit purposes. None of the net proceeds of the raffle may be used to pay any person to conduct the raffle, or to rent a building where the tickets are received or sold or the drawing is conducted. (1983 (Reg. Sess., 1984), c. 1107, s. 11; 1993, c. 219, s. 1; c. 539, s. 215.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until January 1, 1995. The second version of subsection (a) set out above is effective January 1, 1995.

Editor's Note. — Session Laws 1993, c. 219, which amended this section, in s. 2 provides that for purposes of the act, government entities within the State of North Carolina shall be considered nonprofit as defined in G.S. 105-130.11(a).

Session Laws 1993, c. 539, which amended this section, in s. 1359 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." Section 1359 of Chapter 539 provides that the act becomes effective January 1, 1995.

Effect of Amendments. — Session Laws 1993, c. 219, s. 1, effective June 28, 1993, in subsection (d) substituted "five

§ 14-309.15(a) is set out twice. See subsection headings for effective dates.

VISITOR REGISTRATION SHEET

Commerce — 3/11/97

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NC AFI
	BPMHL
	AG's Office
Jane P. Gray	DOJ
N. David Smith	NEDA
Paul Stock	NC Bankers Assn.
	" " "
Brian Houck	BellSouth
	NCBS
Rob Schofield	NCJCDC
	NC Assoc of Realtors

VISITOR REGISTRATION SHEET

Commerce
Name of Committee

3/11/97
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Dave Horne	Smith Anderson
David Simmons	Zeb Valley, PA
Bill McAulay	PSNC
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Amy Henderson	Hunton & Williams
Angie Harris	Commerce
Don McCorquodale	NC Retail
Zeb Alley	ZDAPA
Frank Grey	N.C. Collection Assoc.
Brenda Dougherty	Sprint

VISITOR REGISTRATION SHEET

Commerce
Name of Committee

3/11/97
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Blum	CBIC
Ken Wyatt	BCBSNC
Larry Heckner	Household Financial Group 1023 Kildaire Farm Rd Cary 27511

MINUTES
SENATE COMMERCE COMMITTEE
March 18, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, March 18, 1997. Twenty members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator Soles called the meeting to order.

The following bills were considered by the Committee:

S. B. 246, AN ACT TO PROVIDE THAT PARTS MAY BE REMOVED FROM CONFISCATED WEAPONS PRIOR TO THE DESTRUCTION OF THE WEAPONS TO REPAIR EXISTING LAW ENFORCEMENT WEAPONS. Senator Rand , the bill sponsor, explained the bill saying that it allows parts to be removed from guns seized by the courts for destruction before the gun itself is destroyed. The parts may then be used by local law enforcement to repair their guns. The bill applies to deadly weapons that are confiscated by the courts from persons convicted of certain offenses. (See attached memorandum for further explanation.)

Senator Hoyle moved that S. B. 246 be given a favorable report. Motion carried.

S. B. 329, AN ACT TO REPEAL THE REQUIREMENT THAT STATE SAVINGS BANKS USE THE LETTERS "SSB" OR THE WORDS "Savings Bank" IN THEIR LEGAL NAME IN ORDER TO CONFORM WITH THE REQUIREMENTS APPLICABLE TO FEDERAL SAVINGS BANKS. Senator Dalton explained the bill saying that the present law was enacted in 1991 and authorized the creation of state-chartered savings banks. At that time, federal savings banks chartered by the Office of Thrift Supervision, were required to use the letters "FSB" in their legal name. The state law was designed to track many of the provisions of the federal law; and since that time the Office of Thrift Supervision has eliminated the "FSB" designation requirement for federal savings banks. This bill will similarly eliminate the requirement for state savings banks to keep these institutions as par with their federal counterparts. (See attached memorandum for further explanation.)

Senator Lee moved that S. B. 329 be given a favorable report. Motion carried.

S. B. 330, AN ACT TO AMEND THE LAW GOVERNING SAFE-DEPOSIT BOXES. Senator Dalton explained the bill. Under the present law, if the rent is one year past due on a safe-deposit box, the lessor may send a notice by registered mail to last known address of the lessee that the safe-deposit box will be opened and the contents stored at the lessee's expense unless the rent is paid within 30 days. The bill changes the period of time a lessor must wait from one year to 90 days and changes the notice requirement from registered mail to certified mail. The bill also changes the requirement that a copy of the law be printed on every contract for rental of a safe-deposit box. Under this amendment the contract need only make reference to this section of the law.

Mr. Paul Stock with the North Carolina Bankers Association assisted in answering questions from the members of the Committee. Several amendments were indicated to satisfy concerns from the Committee, and Senator Soles ruled that the bill be removed from the calendar to allow staff time to prepare a committee substitute incorporating amendments into the bill. The committee substitute will be brought before the Committee at its next meeting.

S. B. 333, AN ACT TO AMEND THE LAW GOVERNING THE PROCEDURE FOR ENTRY OF ORDERS IN THE COMMODITIES ACT. Senator Dalton, the bill's sponsored, offered a Committee Substitute for the bill and moved its adoption. Motion carried. The bill provides that if no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of summary order and no hearing is ordered by the Administrator, the summary order will automatically become a final order after 30 business days from the date service of the notice of summary order was received.

Senator Larry Shaw moved the Committee Substitute for Senate Bill 333 be given a favorable report. Motion carried.

There being no further business, the meeting adjourned at 11:30 a.m.

Senator R. C. Soles, Jr., Chairman

Mrs. Joan R. Leatherman
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, March 18, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	**23**	Require Rental Property Heat	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**246**	Govt. Use/Seized Gun Parts	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**329**	Savings Bank Name	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 3

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, March 19, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **333** Commodities Act Amendment/AB

Draft Number:	PCS7609
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 246

Short Title: Govt. Use/Seized Gun Parts. (Public)

Sponsors: Senators Rand; Albertson, Ballance, Carrington, Cooper, Dannelly, East, Garwood, Gulley, Hartsell, Hoyle, Jenkins, Kerr, Kincaid, Kinnaird, Lee, Martin of Guilford, Miller, Perdue, Phillips, Plyler, Reeves, Warren, and Wellons.

Referred to: Commerce.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PARTS MAY BE REMOVED FROM CONFISCATED WEAPONS PRIOR TO THE DESTRUCTION OF THE WEAPONS TO REPAIR EXISTING LAW ENFORCEMENT WEAPONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-269.1 reads as rewritten:

"**§ 14-269.1. Confiscation and disposition of deadly weapons.**

Upon conviction of any person for violation of G.S. 14-2.2, 14-269, 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. Prior to the destruction of the weapon, the sheriff may remove any parts from the weapon for the repair of local law enforcement weapons that are property of the local government. The sheriff shall maintain a record of the destruction ~~thereof.~~ of the weapon.

(5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

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

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March 11, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 246 (Gov't. Use/Seized Gun Parts)

Senate Bill 246 allows parts to be removed from guns seized by the courts for destruction before the gun itself is destroyed. The parts may then be used by local law enforcement to repair their guns.

The bill applies to deadly weapons that are confiscated by the courts from persons convicted of certain offenses. The covered offenses are as follows:

(1) Any serious felony (Class A, B, B1, B2, C, D, or E) that was committed with the use, display or threat of use or display of a firearm (G.S. 14-2.2);
(2) Any offense that was committed with a deadly weapon (in this case, a pistol or gun) in violation of law (G.S. 14-269(a1).
(2) Carrying a concealed weapon in violation of law (G.S. 14-269)
(3) Possession or carrying of a handgun by a minor.

Under current law, when the court confiscates a deadly weapon, it may dispose of it by ordering it returned to its rightful owner (if other than the defendant), turning it over to the SBI, turning it over to the Justice Academy, or turning it over to the sheriff for destruction. In cases where the judge turns the gun over to the sheriff for destruction, Senate Bill 246 will allow the sheriff to remove the parts for use in other local law enforcement guns before destroying the remainder of the gun.

The bill takes effect upon becoming law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 14-2: Repealed by Session Laws 1993, c. 538, s. 2.1, effective October 1, 1994.

Cross References. — As to structured sentencing of persons convicted of crimes, effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. — Session Laws 1993, c. 538, s. 2.1 repeals this section effective October 1, 1994. Section 56 of Session Laws 1993, c. 538, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-2.1: Repealed by Session Laws 1993, c. 538, s. 3, effective October 1, 1994.

Cross References. — As to structured sentencing of persons convicted of crimes, effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. — Session Laws 1993, c. 538, s. 3 repeals this section effective October 1, 1994. Section 56 of Session Laws 1993, c. 538, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-2.2. Sentencing of a person convicted of a Class A, B, B1, B2, C, D, or E felony who used, displayed, or threatened to use or display a firearm during the commission of the crime; confiscation and disposition of a firearm used in a felony.

(a) If a person is convicted of a Class A, B, B1, B2, C, D, or E felony and the person used, displayed, or threatened to use or display a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 60 months as provided by G.S. 15A-1340.16A.

The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the person.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

(1) The person is not sentenced to an active term of imprisonment.

(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B, B1, B2, C, D, or E felony.

(3) The person did not actually possess a firearm about his or her person.

(c) When a person is found to have personally used a firearm in the commission or attempted commission of a felony and the firearm is owned by that person, or the serial number on the firearm has been defaced such that ownership is not traceable, the court shall order that the firearm be confiscated and disposed of in any of the ways provided by G.S. 14-269.1 that the court in its discretion deems appropriate.

(d) Repealed by Session Laws 1994, Extra Session, c. 22, s. 19(b), effective October 1, 1994. (1979, c. 760, s. 2; 1979, 2nd Sess., c. 1316, ss. 34, 47, 48; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 538, s. 4; 1994, Ex. Sess., c. 22, ss. 18, 19(a), (b).)

Editor's Note. —

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 19(c) repealed Session Laws 1993, c. 538, s. 4, which as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), would have repealed this section effective October 1, 1994.

Subsection (a) was amended by Session Laws 1994, Extra Session, c. 22, s. 19(a), in the coded bill drafting format provided by § 120-20.1. Without engrossing the amendment added a sentence to the end of the first paragraph in subsection (a) which read "Evidence of the use, display, or threatened use or display of a firearm that is needed to prove an element of the underlying felony shall not be used to establish the enhancement under this section." This language is similar to present subsection (b)(2). The section has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 24 provides: "Prosecution for, or sentences based on, offenses committed before the effective dates of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, which amended this section, made the amendment by c. 22, s. 18, effective May 1, 1994, and applicable to offenses committed on or after that date.

Session Laws 1994, Extra Session, which amended this section, made the amendment by c. 22, s. 19(a) and (b), which was effective on the date that Section 56 of Chapter 538 of the 1993 Session Laws became effective (October 1, 1994), and applicable to offenses committed on or after that date.

§ 14-2.4. Punishment for conspiracy to commit a felony.

(a) Unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a felony is guilty of a felony that is one class lower than the felony he or she conspired to commit, except that a conspiracy to commit a Class A or Class B1 felony is a Class B2 felony, a conspiracy to commit a Class B2 felony is a Class C felony, and a conspiracy to commit a Class I felony is a Class 1 misdemeanor.

(b) Unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a misdemeanor is guilty of a misdemeanor that is one class lower than the misdemeanor he or she conspired to commit, except that a conspiracy to commit a

ARTICLE 34.

Custodial Institutions.

§ 14-268. Violation made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 162, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER IX. OFFENSES AGAINST THE PUBLIC PEACE.

ARTICLE 35.

Offenses Against the Public Peace.

§ 14-269. Carrying concealed weapons.

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, or other deadly weapon of like kind, except when the person is on the person's own premises.

(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except in the following circumstances:

(1) The person is on the person's own premises.

(2) The deadly weapon is a handgun, and the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter.

(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil officers of the United States while in the discharge of their official duties;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the State, or of any county, city, or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(5) Sworn law-enforcement officers, when off-duty, if:

a. Written regulations authorizing the carrying of concealed weapons have been filed with the clerk of superior court in the county where the law-enforcement unit is located by the sheriff or chief of police or other superior officer in charge; and

b. Such regulations specifically prohibit the carrying of concealed weapons while the officer is consuming or under the influence of alcoholic beverages.

(b1) It is a defense to a prosecution under this section that:

(1) The weapon was not a firearm;

(2) The defendant was engaged in, or on the way to or from, an activity in which he legitimately used the weapon;

(3) The defendant possessed the weapon for that legitimate use; and

(4) The defendant did not use or attempt to use the weapon for an illegal purpose.

The burden of proving this defense is on the defendant.

(c) Any person violating the provisions of subsection (a) of this section shall be guilty of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class I felony.

(d) This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, "ordinary pocket knife" means a small knife, designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action. (Code, s. 1005; Rev., s. 3708; 1917, c. 76; 1919, c. 197, s. 8; C.S., s. 4410; 1923, c. 57; Ex. Sess. 1924, c. 30; 1929, cc. 51, 224; 1947, c. 459; 1949, c. 1217; 1959, c. 1073, s. 1; 1965, c. 954, s. 1; 1969, c. 1224, s. 7; 1977, c. 616; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 86; 1985, c. 432, ss. 1-3; 1993, c. 539, s. 163; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 398, s. 2.)

Editor's Note. — Session Laws 1993, c. 539, s. 163, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1995 amendment, effective December 1, 1995, and applicable to offenses committed on or after that date, in subsection (a) deleted "except when on his own premises" preceding "willfully and intentionally", deleted "pistol, gun" following "stun gun", added "except when the person is on the person's own premises", and deleted the second and third sentences regarding ordinary pocket knives; added subsection (a1); in subdivision (b)(5) deleted "Full-time" preceding "Sworn", and deleted "in the jurisdiction where they are assigned" following "off-duty"; in subsection (c) substituted "subsection (a) of this section" for "this section" in the first sentence, and added the second and third sentences; and added subsection (d).

CASE NOTES

I. General Consideration.
IV. Illustrative Cases.

I. GENERAL CONSIDERATION.

Cited in State v. McGirt, 122 N.C. App. 237, 468 S.E.2d 833 (1996).

IV. ILLUSTRATIVE CASES.

Sitting on Firearm. — Where officer approached the defendant's car and, using his flashlight, looked into the interior, viewed the empty holster next to the defendant, asked the defendant where his gun was and was told by the defendant that the defendant was sitting on the gun, the officer then had probable cause to arrest the defendant for carrying a concealed weapon. State v. Brooks, 337 N.C. 132, 446 S.E.2d 579 (1994).

§ 14-269.4. Weapons on State property and in courthouses.

Editor's Note. — Session Laws 1993, c. 539, s. 166, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-269.6. Possession and sale of spring-loaded projectile knives prohibited.

Editor's Note. — Session Laws 1993, c. 539, s. 167, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-269.7. Prohibitions on handguns for minors.

(a) Any minor who possesses or carries a handgun is guilty of a Class 2 misdemeanor.

(b) This section does not apply:

(1) To officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties or acting under orders requiring them to carry handguns.

(2) To a minor who possesses a handgun for educational or recreational purposes while the minor is supervised by an adult who is present.

(3) To an emancipated minor who possesses such handgun inside his or her residence.

(4) To a minor who possesses a handgun while hunting or trapping outside the limits of an incorporated municipality if he has on his person written permission from a parent, guardian, or other person standing in loco parentis.

(c) The following definitions apply in this section:

(1) Handgun. — A firearm that has a short stock and is designed to be fired by the use of a single hand, or any combination of parts from which such a firearm can be assembled.

(2) Minor. — Any person under 18 years of age. (1993, c. 259, s. 1; 1994, Ex. Sess., c. 14, s. 5; 1993 (Reg. Sess., 1994), c. 597, s. 1.)

Editor's Note. —

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, which amended this section, was effective on the same date that Chapter 539 of the 1993 Session Laws became effective (October 1, 1994), and applicable to offenses occurring on or after that date.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995 and applicable to offenses committed on or after that date, in subdivision (c)(1) substituted "A" for "Any dangerous," substituted "that has a short stock and is" for "including a pistol or revolver" and added at the end "or any

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 329

Short Title: Savings Bank Name. (Public)

Sponsors: Senators Dalton, Soles; and Warren.

Referred to: Commerce.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE REQUIREMENT THAT STATE SAVINGS BANKS USE THE LETTERS "SSB" OR THE WORDS "SAVINGS BANK" IN THEIR LEGAL NAME IN ORDER TO CONFORM WITH THE REQUIREMENTS APPLICABLE TO FEDERAL SAVINGS BANKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 54C-8(a) reads as rewritten:

"(a) Nothing in this Chapter shall be construed to invalidate any charter that was valid before the enactment of this Chapter. Any savings banks so chartered on October 1, 1991, may continue operation in accordance with the Chapter under which it was chartered. However, after October 1, 1991, no depository institution may be qualified as a savings bank except in accordance with this Chapter. ~~Any savings bank chartered under this Chapter shall use the letters 'SSB' in its legal name.~~"

Section 2. G.S. 54C-64(3) is repealed.

Section 3. This act becomes effective July 1, 1997, and Section 2 applies to acts committed on or after that date.

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March 17, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 329 - Savings Bank Name.**

Senate Bill 329 amends G.S. 54C-8(a) by deleting the requirement that any savings bank chartered by the North Carolina Savings Institution Commission use the letters "SSB" in its legal name.

The present law was enacted in 1991 and authorized the creation of state chartered savings banks. At that time, federal savings banks chartered by the Office of Thrift Supervision, were required to use the letters "FSB" in their legal name. The state law was designed to track many of the provisions of the federal law. Since that time, the Office of Thrift Supervision has eliminated the "FSB" designation requirement for federal savings banks. This bill would similarly eliminate the requirement for state savings banks to keep these institutions on a par with their federal counterparts.

Section 2 of the bill is a conforming amendment which repeals G.S. 54C-64(3). That provision makes it a misdemeanor for a savings bank to advertise without using the "SSB" designation and the words "savings bank" in a type that is equally prominent with the other terms in the name of the savings bank.

This act would become effective July 1, 1997, and Section 2 would apply to acts committed on or after that date.

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March 18, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Judiciary Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **Senate Bill 333 - Commodities Act Amendments** - Senator Dalton

Senate Bill 333 clarifies the effective date of a summary order issued by the Secretary of State for an alleged violation of the Commodities Act. This bill is a recommendation of the Secretary of State's office.

The bill clarifies that if no request for a hearing, other responsive pleading, or any other submission is received by the Secretary of State in response to a summary order issued by the Secretary within 30 days after the service of the notice, the summary order becomes effective 30 days after the date of the entry of the order. The present law is not clear as to the time limit for requesting a hearing nor when the order becomes effective.

Actions by the Secretary of State under this section are civil administrative proceedings, normally seeking to stop actions in violation of the law. While certain violations of the Commodities Act are punished as Class I felonies, the administrative actions, primarily as cease and desist orders, are often used in situations where violations are initiated out of state and where obtaining criminal jurisdiction would be more difficult.

This bill would become effective October 1, 1997, and would apply to administrative proceedings commenced by the Secretary of State on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 78D-30. Procedure for entry of an order.

(a) The Administrator shall commence an administrative proceeding under this Chapter, by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but must be in writing.

(b) Upon entry of a notice of intent or summary order, the Administrator shall promptly notify all interested parties that the notice or summary order has been entered and the reasons therefor. If the proceeding is pursuant to a notice of intent, the Administrator shall inform all interested parties of the dates, time, and place set for the hearing on the notice. If the proceeding is pursuant to a summary order, the Administrator shall inform all interested parties that they have 30 business days from the entry of the order to file a written request for a hearing on the matter with the Administrator and that the hearing will be scheduled to commence with 30 business days after the receipt of the written request.

(c) If the proceeding is pursuant to a summary order, the Administrator, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the Administrator's own motion.

(d) If no hearing is requested and none is ordered by the Administrator, the summary order will automatically become a final order after 30 business days.

(e) If a hearing is requested or ordered, the Administrator, after notice of, and opportunity for, hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(f) No final order or order after hearing may be returned without:

(1) Appropriate notice to all interested persons;

(2) Opportunity for hearing by all interested persons; and

(3) Entry of written findings of fact and conclusions of law.

Every hearing in an administrative proceeding under this Chapter shall be public unless the Administrator grants a request joined in by all the respondents that the hearing be conducted privately.

(1989, c. 634, s. 1.)

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 330

Short Title: Safe-Deposit Boxes. (Public)

Sponsors: Senators Dalton, Soles; and Warren.

Referred to: Commerce.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING SAFE-DEPOSIT BOXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-43.7 reads as rewritten:

"**§ 53-43.7. Safe-deposit boxes; unpaid rentals; procedure; escheats.**

(a) If the rental due on a safe-deposit box has not been paid for ~~one year,~~ 90 days, the lessor may send a notice by ~~registered~~ certified mail to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed by the Treasurer or by the lessor, if retained by the lessor pursuant to a determination by the Treasurer under G.S. 116B-31(c).

(c) If the contents of the safe-deposit box have not been claimed within two years of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the box will be delivered to the State Treasurer as abandoned property under the provisions of Chapter 116B.

(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under G.S. 116B-31(c); but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to him, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer.

(e) Repealed by Session Laws 1979, 2nd Session, c. 1311, s. 5.

(f) A ~~copy of~~ reference to this section shall be printed on every contract for rental of a safe-deposit box."

Section 2. This act becomes effective July 1, 1997, and applies to safe-deposit boxes rented on or after that date.

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March 17, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 330 - Safe - Deposit Boxes.**

Senate Bill 330 amends G.S. 53-43.7 relating to unpaid rent on safe-deposit boxes. Under present law, if the rent is one year past due, the lessor may send a notice by registered mail to the last known address of the lessee that the safe-deposit box will be opened and the contents stored at the lessee's expense unless the rent is paid within 30 days.

This bill changes the period of time a lessor must wait from one year to 90 days and changes the notice requirement from registered mail to certified mail. This bill also changes the requirement that a copy of the law be printed on every contract for rental of a safe-deposit box. Under this amendment the contract need only make reference to this section of the law.

This act would become effective July 1, 1997 and apply to safe-deposit boxes rented on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 333

Short Title: Commodities Act Amendment/AB. (Public)

Sponsors: Senators Dalton; and Hartsell.

Referred to: Commerce.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING THE PROCEDURE FOR ENTRY OF ORDERS IN THE COMMODITIES ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 78D-30(d) reads as rewritten:

"(d) If no ~~hearing is requested~~ request for a hearing or other responsive pleading or submission is received by the Administrator within 30 business days of service of notice under subsection (b) of this section and ~~none~~ no hearing is ordered by the Administrator, the summary order will automatically become a final order after 30 business ~~days.~~ days from the date of entry of the order."

Section 2. This act becomes effective October 1, 1997, and applies to administrative proceedings commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S333-CSRU-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 333
THIS IS A DRAFT 18-MAR-97 09:42:36
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Commodities Act Amendment/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING THE PROCEDURE FOR ENTRY OF ORDERS IN THE COMMODITIES ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 78D-30(d) reads as rewritten:

"(d) If no ~~hearing is requested~~ request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of summary order under subsection (b) of this section and ~~none~~ no hearing is ordered by the Administrator, the summary order will automatically become a final order after 30 business ~~days.~~ days from the date service of the notice of summary order was received."

Section 2. This act becomes effective October 1, 1997, and applies to administrative proceedings commenced on or after that date.

VISITOR REGISTRATION SHEET

COMMERCE — 3-18-97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Lorraine L. Payne	Home Education - Chatham Co.
Jim Hassett	
Ken Kirion	American General
Chuck Barham	NC Financial Svs Assoc.
Pat Schofield	NCUCDC
David L. Mabrey	SEC. OF STATE
Scott Templeton	"
Frank Galanko	"
McNeil Chestnutt	AG's off.
Otis M. Meacham	Deputy Commissioner of Banks
Barbara Allen	Secy. of State
Guy Rouse	Agents

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Phil Lehman	NC AG's Office
Jerry Desmond	GTE
Gary Walker	ALLTEL
Larry Heckner	Household Financial Group.
Chris Scott	NC AFL-CIO
Gene Upchurch	CP&L
Shelton Alle	NCBA
Paul Sock	NCBA

MINUTES
SENATE COMMERCE COMMITTEE
MARCH 25, 1997

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, March 25, 1997. Sixteen members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator Soles called the meeting to order. He introduced Sarah E. Kinsey from Cary, North Carolina, the Senate Page assisting with the meeting. Ms. Kinsey was sponsored by Senator Reeves.

The following bills were considered by the Committee:

C. S. for SB 141, AN ACT TO EXEMPT CERTAIN GOVERNMENTAL ENTITIES FROM STATE PURCHASE AND CONTRACT REQUIREMENTS.

Senator Rand moved the adoption of Committee Substitute # 2 for Committee Substitute #1 for Senate Bill 141. Motion carried. Senator Rand said the new Committee Substitute adds two provisions to make the statute applicable to the North Carolina Seafood Industrial Park Authority and the County of Davie. The original bill pertained to the State Ports Authority only. Senator Cochrane explained the provision for Davie County was needed to expedite the design and construction of jail and law enforcement facilities, and she moved that the Committee Substitute #2 for Committee Substitute #1 for S. B. 141 be given a favorable report. Motion carried.

Mr. John Boyd with the Carolinas Electrical Contractors Assn., Inc., stated his Association's opposition to the bill.

SB 330, AN ACT TO AMEND THE LAW GOVERNING SAFE-DEPOSIT BOXES.

Senator Dalton, sponsor of the bill, was recognized to speak on the bill, and he moved the adoption of a Committee Substitute. Motion carried. Senator Dalton said the Committee Substitute simply incorporated the changes discussed at the previous meeting. Senator Hoyle moved that the Committee Substitute for Senate Bill 330 be given a favorable report. Motion carried.

SB 382, AN ACT REDEFINING THE BASE PERIOD FOR UNEMPLOYMENT BENEFITS AND ELIMINATING THE ONE AND ONE-HALF TIMES TEST.

Senator Winner, the bill sponsor, was recognized to explain the bill. (See attached memorandum for additional information.) The bill redefines the "base period" that a

person must have worked before being eligible for unemployment benefits and eliminates one of the other tests ("the one and one-half times test") to determine eligibility. Numerous questions were asked by Committee members. Mr. Parker Chesson, Chairman of the Employment Security Commission, assisted in the explanation.

Senator Kerr moved that Senate Bill 382 be given a favorable report. Senator Jordan offered a substitute motion that the bill be referred to a subcommittee. Senator Jordan's motion failed. The motion to give the bill a favorable report failed. Senator Soles ruled that the bill would be removed from the calendar and rescheduled at the sponsor's request.

SB 96, AN ACT TO CLARIFY THE REQUIREMENT THAT PAWNSHOP RECORDS BE MADE AVAILABLE TO LOCAL LAW ENFORCEMENT.

Senator Kerr, the bill sponsor, said the bill requires pawnshops located within municipalities make pawn ticket records available to both the sheriff of the county and the chief of police. The present wording of the statute requires the records to be made available to the sheriff only if the pawnshop is not located within a municipality. (See attached memorandum for further information.) Senator Kerr said the Sheriff's Association supported the bill. Mr. Howard Kramer representing the North Carolina Pawnbrokers' Association said the Association also supports it. Senator Reeves moved that Senate Bill 96 be given a favorable report. Motion carried.

There being no further business, the meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Chairman

Mrs. Joan R. Leatherman
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, March 25, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **96** Pawnshop Records Access.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**141** Purchase & Contract Exemptions
Draft Number: PCSA601
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, March 26, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **330** Safe-Deposit Boxes.

Draft Number:	PCS1648
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 141
Commerce Committee Substitute Adopted 2/26/97

Short Title: Exempt State Ports Purchase & Contract. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE STATE PORTS COMMISSION TO EXEMPT THE STATE PORTS AUTHORITY FROM STATE PURCHASE AND CONTRACT REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G. S. 143B-465 reads as rewritten:

"**§ 143B-465. Purchase of supplies, material and equipment and building contracts.**

~~All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority. All of the provisions of Chapter 143 of the General Statutes relating to public building contracts are hereby made applicable to the North Carolina State Ports Authority for those construction projects which may be funded, in whole or in part, by appropriations from the General Assembly.~~

The following general laws, to the extent provided below, do not apply to the North Carolina State Ports Authority:

(1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts for supplies, materials, equipment and contractual services of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.

(2) Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised[4] by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.

(3) G.S. 143-341(3) shall not apply to the plans and specifications for construction or renovation authorized by the North Carolina State Ports Authority.

Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regards to matters governed by Articles 3 and 8 of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any purchases or building contracts exceeding two hundred fifty thousand dollars ($250,000) to which this exemption is applied."

Section 2. This act is effective when it becomes law, and shall expire July 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 141
Commerce Committee Substitute Adopted 2/26/97
Proposed Committee Substitute S141-PCSA601

Short Title: Purchase & Contract Exemptions. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN GOVERNMENTAL ENTITIES FROM STATE PURCHASE AND CONTRACT REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G. S. 143B-465 reads as rewritten:

"**§ 143B-465. Purchase of supplies, material and equipment and building contracts.**

~~All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority. All of the provisions of Chapter 143 of the General Statutes relating to public building contracts are hereby made applicable to the North Carolina State Ports Authority for those construction projects which may be funded, in whole or in part, by appropriations from the General Assembly.~~

The following general laws, to the extent provided below, do not apply to the North Carolina State Ports Authority:

(1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts for supplies, materials, equipment, and contractual services of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.

(2) Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.

(3) G.S. 143-341(3) shall not apply to the plans and specifications for construction or renovation authorized by the North Carolina State Ports Authority.

Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regards to matters governed by Articles 3 and 8 of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any purchases or building contracts exceeding two hundred fifty thousand dollars ($250,000) to which this exemption is applied."

Section 2. G.S. 113-315.36 reads as rewritten:

"**§ 113-315.36. Purchase of supplies, material and ~~equipment.~~ equipment and building contracts.**

~~All the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina Seafood Industrial Park Authority.~~

The following general laws, to the extent provided below, do not apply to the North Carolina Seafood Industrial Park Authority:

(1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts for supplies, materials, equipment, and contractual services of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.

(2) Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.

(3) G.S. 143-341(3) shall not apply to the plans and specifications for construction or renovation authorized by the North Carolina Seafood Industrial Park Authority.

Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regards to matters governed by Articles 3 and 8 of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the

Joint Legislative Commission on Governmental Operations on any purchases or building contracts exceeding two hundred fifty thousand dollars ($250,000) to which this exemption is applied."

Section 3. The County of Davie may contract for the design and construction of jail and law enforcement facilities without being subject to the requirements of G.S. 143-128, 143-129, 143-131, and 143-132.

Section 4. This act is effective when it becomes law, and shall expire July 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 330

Short Title: Safe-Deposit Boxes. (Public)

Sponsors: Senators Dalton, Soles; and Warren.

Referred to: Commerce.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING SAFE-DEPOSIT BOXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-43.7 reads as rewritten:

"**§ 53-43.7. Safe-deposit boxes; unpaid rentals; procedure; escheats.**

(a) If the rental due on a safe-deposit box has not been paid for ~~one year,~~ 90 days, the lessor may send a notice by ~~registered~~ certified mail to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed by the Treasurer or by the lessor, if retained by the lessor pursuant to a determination by the Treasurer under G.S. 116B-31(c).

(c) If the contents of the safe-deposit box have not been claimed within two years of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the box will be delivered to the State Treasurer as abandoned property under the provisions of Chapter 116B.

(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under G.S. 116B-31(c); but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to him, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer.

(e) Repealed by Session Laws 1979, 2nd Session, c. 1311, s. 5.

(f) A ~~copy of~~ reference to this section shall be printed on every contract for rental of a safe-deposit box."

Section 2. This act becomes effective July 1, 1997, and applies to safe-deposit boxes rented on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 330
Proposed Committee Substitute S330-PCS1648

Short Title: Safe-Deposit Boxes. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING SAFE-DEPOSIT BOXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-43.7 reads as rewritten:

"**§ 53-43.7. Safe-deposit boxes; unpaid rentals; procedure; escheats.**

(a) If the rental due on a safe-deposit box has not been paid for ~~one year,~~ 90 days, the lessor may send a notice by registered mail or certified mail, return receipt requested, to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee or stockholder of the lessor. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail or certified mail, return receipt requested, to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed by the Treasurer

or by the lessor, if retained by the lessor pursuant to a determination by the Treasurer under G.S. 116B-31(c).

(c) If the contents of the safe-deposit box have not been claimed within two years of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the box will be delivered to the State Treasurer as abandoned property under the provisions of Chapter 116B.

(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under G.S. 116B-31(c); but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to him, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer.

(e) Repealed by Session Laws 1979, 2nd Session, c. 1311, s. 5.

(f) ~~A copy of~~ An explanation of the contractual provisions pertaining to default, together with reference to this section shall be printed on every contract for rental of a safe-deposit box."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 382

Short Title: Redefine Unemp. Ins. Base Period. (Public)

Sponsors: Senators Winner; Ballance, Cooper, Dannelly, Gulley, Hartsell, and Rand.

Referred to: Commerce.

March 12, 1997

A BILL TO BE ENTITLED

AN ACT REDEFINING THE BASE PERIOD FOR UNEMPLOYMENT BENEFITS AND ELIMINATING THE ONE AND ONE-HALF TIMES TEST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-8(17) reads as rewritten:

"(17) a. Repealed by Session Laws 1977, c. 727, s. 33.

b. Repealed by Session Laws 1977, c. 727, s. 33.

c. As to claims filed on or after October 1, 1974, for claimants who do not have a benefit year in progress, 'benefit year' shall mean the one-year period beginning with the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits. A valid claim shall be deemed to have been filed only if such individual, at the time the claim is filed, is unemployed, and has been paid wages in his base period totaling at least five hundred sixty-five dollars and fifty cents ($565.50), and equal to at least one and one-half times his high-quarter wages, which high-quarter wages must equal at least one hundred and fifty dollars ($150.00). As to claims filed on or after August 1, 1981, for claimants who do not have a benefit year in progress, 'benefit year' shall mean the 52 week period beginning with the first day of a week with respect to which an individual first registers for work and files a valid claim

for benefits. Provided, however, if the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits is either (i) the first day of a calendar quarter, or (ii) the second day of a calendar quarter followed by a February 29 within one year thereof, 'benefit year' shall mean the one-year period beginning with that first day of the week with respect to which the individual first registers for work and files a valid claim for benefits. A valid claim shall be deemed to have been filed only if such individual, at the time the claim is filed, is unemployed, and has been paid wages in his base period totaling at least six times the average weekly insured wage, obtained in accordance with ~~G.S. 96-8(22) and equal to at least one and one-half times his high-quarter wages, which high-quarter wages must equal at least one and one-half times the average weekly insured wage, obtained in accordance with G.S. 96-8(22).~~ G.S. 96-8(22), and has been paid wages in at least two quarters of the individual's base period.

d. Repealed by Session Laws, 1981, c. 160, s. 11."

Section 2. G.S. 96-8(18) reads as rewritten:

"(18) 'Base period' means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year as defined in subdivision (17) of this section. If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subdivision, 'alternative base period' means the last four completed calendar quarters."

Section 3. This act is effective when it becomes law and applies to new initial claims filed on or after September 1, 1997.

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March 25, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 382 (Redefine Unemployment Insurance Base Period)

Senate Bill 382 redefines the "base period" that a person must have worked before being eligible for unemployment benefits and eliminates one of the other tests ("the one and one-half times test") to determine eligibility. Currently, a person's base period is the first four of the last five completed calendar quarters prior to the filing of the claim for unemployment benefits. A person must have earned wages during that base period at least six times greater than the average weekly insured wage. Senate Bill 382 provides that if the person did not earn enough wages during the first four of the last five months to qualify for unemployment benefits, he or she can instead use the last four calendar quarters as a base period.

Current law also requires that the person's base period wages must be at least one and one-half times his high quarter wages and that these high quarter wages must be at least one and one-half times the average weekly insured wage. Senate Bill 382 eliminates this requirement. The "six times" test referred to above is not eliminated.

This bill takes effect upon becoming law and applies to new initial claims filed on or after September 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 96

Short Title: Pawnshop Records Access. (Public)

Sponsors: Senator Kerr.

Referred to: Commerce.

February 12, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REQUIREMENT THAT PAWNSHOP RECORDS BE MADE AVAILABLE TO LOCAL LAW ENFORCEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 91A-7(d) reads as rewritten:

"(d) The pledgor shall sign the pawn ticket and shall receive an exact copy of the pawn ticket which shall be signed or initialed by the pawnbroker or any employee of the pawnbroker. These records shall be available for inspection and pickup each regular workday by the sheriff of the county ~~or the chief of police of the municipality in which the pawnshop is located.~~ in which the pawnshop is located or, in the case of a pawnshop located within a municipality, by both the sheriff and the chief of police. These records shall be a correct copy of the entries made of the pawn or purchase transaction and shall be carefully preserved without alteration, and shall be available during regular business hours."

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

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March 24, 1997

MEMORANDUM

TO: **Senate Committee on Commerce**

FROM: **Steven Rose, Committee Cocounsel**

RE: **Senate Bill 96; Access to Pawnshop Records**

Senate Bill 96 amends G.S. 91A-7(d) to require that pawnshops located within municipalities make pawn ticket records available to both the sheriff of the county and the chief of police. The present wording of the statute requires the records to be made available to the sheriff only if the pawnshop is not located within a municipality.

The act is effective when it becomes law. A copy of G.S. 91-7 is found on the reverse side of this memorandum.

S96-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 91A-7. Record keeping requirements.

(a) Every pawnbroker shall keep consecutively numbered records of each and every pawn transaction, which shall correspond in all essential particulars to a detachable pawn ticket or copy thereof attached to the record.

(b) The pawnbroker shall, at the time of making the pawn or purchase transaction, enter upon the pawn ticket a record of the following information which shall be typed or written in ink and in the English language:

(1) A clear and accurate description of the property, including model and serial number if indicated on the property;
(2) The name, residence address, phone number, and date of birth of pledgor;
(3) Date of the pawn transaction;
(4) Type of identification and the identification number accepted from pledgor;
(5) Description of the pledgor including approximate height, weight, sex, and race;
(6) Amount of money advanced;
(7) The date due and the amount due;
(8) All monthly pawn charges, including interest, annual percentage rate on interest, and total recovery fee; and
(9) Agreed upon "stated value" between pledgor and pawnbroker in case of loss or destruction of pledged item; unless otherwise noted, "stated value" is the same as the loan value.

(c) The following shall be printed on all pawn tickets:

(1) The statement that "ANY PERSONAL PROPERTY PLEDGED TO A PAWNBROKER WITHIN THIS STATE IS SUBJECT TO SALE OR DISPOSAL WHEN THERE HAS BEEN NO PAYMENT MADE ON THE ACCOUNT FOR A PERIOD OF 60 DAYS PAST MATURITY DATE OF THE ORIGINAL CONTRACT. NO FURTHER NOTICE IS NECESSARY.";
(2) The statement that "THE PLEDGOR OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE PLEDGOR'S TO SELL OR PAWN.";
(3) The statement that "THE ITEM PAWNED IS REDEEMABLE ONLY BY THE BEARER OF THIS TICKET OR BY IDENTIFICATION OF THE PERSON MAKING THE PAWN."; and
(4) A blank line for the pledgor's signature and the pawnbroker's signature or initials.

(d) The pledgor shall sign the pawn ticket and shall receive an exact copy of the pawn ticket which shall be signed or initialed by the pawnbroker or any employee of the pawnbroker. These records shall be available for inspection and pickup each regular workday by the sheriff of the county or the chief of police of the municipality in which the pawnshop is located. These records shall be a correct copy of the entries made of the pawn or purchase transaction and shall be carefully preserved without alteration, and shall be available during regular business hours.

(e) Except as otherwise provided in this Chapter, any person presenting a pawn ticket to a pawnbroker is presumed to be entitled to redeem the pledged goods described on the ticket. (1989, c. 638, s. 2.)

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 25, 1991

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
PAUL BESSENT	CHECK LASNING HQ GREENVILLE N.C.
DAVID CLEGG	ESC
T.S. WHITAKER	ESC
PARKER CHESSON	ESC
Lucius Pullen	ATTORNEY
Gordon Allen	NCBA
Paul Stock	N.C. Bankers Assoc.
Rob Schofield	NCJCDC
Glen Petaso	DOA
Ed Luck	PHC
Howard Kramer	N.C. TBA
Brenda Summers	NC Equity
Don Rubuck	NC BTC
Phil Lehman	NC AG's office
McNeil Chestnut	NCAG's Office
Hugh Aldridge	Lawrence Baley & Assoc.
Jackie Gray	NC EMA
Beverly Smith	FHBM
Ken Dawson	American Council
Curt Williams	Governor's Office
Jon Carr	Jordan Price Wall Gray & Jones
Doris Weaver	NC CWA

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Chris Scott	NC AFL-CIO
Whitney Obrig	DHHDSAS
Paul Smith	PFFNC
Amanda Digby	NC ATL

MINUTES
SENATE COMMERCE COMMITTEE
March 27, 1997

A meeting of the Senate Commerce Committee was held in Room 1027 of the Legislative Building at 11:00 a.m. on Thursday, March 27, 1997. Sixteen members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator Soles called the meeting to order.

The following bills were considered by the committee:

SB 417 - AN ACT TO ELIMINATE THE BONDING REQUIREMENTS FOR PUBLIC CONTRACTS WITH A VALUE OF ONE MILLION DOLLARS OR LESS.

Sen. L. Shaw, sponsor, explained this bill to the committee. Sen. Shaw sent forth an amendment and moved that it be adopted, motion carried. Mr. Berry Jenkins, DOT, told the committee that they do favor this bill as amended. Sen. Shaw moved to give the bill as amended a favorable report and to incorporate it into a committee substitute. Motion carried.

SB 418 - AN ACT TO REQUIRE THE SECRETARY OF ADMINISTRATION TO SET BUSINESS SIZE STANDARDS AND APPLY THEM TO THE PROCUREMENT PROCEDURES TO PROMOTE INCREASED PROCUREMENTS FROM SMALL AND MEDIUM-SIZED BUSINESSES.

Sen. L. Shaw, bill sponsor, was recognized to explain the bill. Sen. Shaw sent forth an amendment and moved that it be adopted, motion carried. Sen. Shaw sent forth Amendment #2 and moved that it be adopted, motion carried.

Mrs. Perry Morgan, National Federation of Small Businesses, was recognized. She spoke in favor of the bill.

Sen. Shaw moved to give the bill as amended a favorable report and to incorporate it into a committee substitute and that the committee substitute be given a favorable report. Motion carried.

Sen. Ballance moved that the vote on which SB 417 was given a favorable report be re-considered. Motion carried. Sen. Ballance sent forth an amendment and moved that it be adopted, motion carried. Sen. Ballance moved to give the bill as amended a favorable report and that it be incorporated into a committee substitute and that it be given a favorable report. The vote was 7-7. Chairman announced that the bill would be carried over until next week.

SB 208 - AN ACT PERTAINING TO THE SANITIZATION OF COOKING UTENSILS PROVIDED BY LODGING ESTABLISHMENTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

Sen. Fox, bill sponsor, was recognized to explain the bill. A proposed committee substitute was sent forth and Sen. Carpenter moved that it be adopted, motion carried. Sen. Carpenter sent forth an amendment and moved that it be adopted, motion carried. Sen. Dalton moved to give the proposed committee substitute as amended a favorable report and to incorporate the amendment into a new committee substitute and that it be given a favorable report. Motion carried.

SB 425 - AN ACT TO AMEND THE ARTICLE ON REFRIGERATION CONTRACTORS.

Sen. Miller, bill sponsor, was recognized to explain the bill. Sen. Carpenter moved to give the bill a favorable report. Motion carried.

There being no further business, meeting adjourned.

Sen. R. C. Soles, Jr., Chairman

Janet P. Blalock, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
SEN. R. C. SOLES, JR., Chairman

Thursday, March 27, 1997

SEN. R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **425** Refrigeration Contractors
Sequential Referral: none
Recommended Referral: Finance

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 417

Short Title: Public Contract Bonding Req'ments. (Public)

Sponsors: Senators Shaw of Cumberland, Ballance; and Jordan.

Referred to: Commerce.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE BONDING REQUIREMENTS FOR PUBLIC CONTRACTS WITH A VALUE OF ONE MILLION DOLLARS OR LESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129(b) reads as rewritten:

"(b) Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal for a contract with a value of more than one million dollars ($1,000,000) shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. No deposit or bid bond shall be required when the contract has a value of one million dollars ($1,000,000) or less. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. ~~In the case of proposals in an estimated amount of less than one hundred thousand dollars ($100,000) for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.~~

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor."

Section 2. G.S. 143-129(c) reads as rewritten:

"(c) All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made for a contract with a value of more than one million dollars ($1,000,000) to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, said board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body ~~may~~ shall waive the requirement for a surety bond or other ~~deposit.~~ deposit when the contract has a value of one million dollars ($1,000,000) or less.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days."

Section 3. G.S. 44A-26(a) reads as rewritten:

"(a) When the total amount of construction contracts awarded for any one project exceeds one ~~hundred thousand~~ million dollars ~~($100,000)~~ ($1,000,000) a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any ~~contractor with a contract more than fifteen thousand dollars ($15,000).~~ contractor. In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

(1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body which awarded the contract.

(2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the

protection of the persons furnishing materials or performing labor for which a contractor or subcontractor is liable.

No bonds shall be required from a contractor on a contract with a value of one million dollars ($1,000,000) or less."

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

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March 27, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 417 (Public Contract Bonding Requirements)

Senate Bill 417 eliminates the bonding requirements for public contracts that have a value of $1,000,000 or less.

Under current law, all public contracts that must be formally bid (i.e., purchase contracts of $20,000 or more and construction contracts of $100,000 or more) require the bidder to post a bid bond or a cash deposit (or a certified or cashiers check) to ensure that it will execute the contract. On purchase contracts of $100,000 or less, the governmental unit soliciting bids *may* waive the requirement of a bid bond. Sections 1 and 2 of Senate Bill 417 would waive bid bonds and deposits for all contracts (purchase contracts and construction contracts) valued at $1,000,000 or less.

Current law also provides for payment and performance bonds on public contracts. Payment and performance bonds ensure the owner that the project will be completed and the subcontractors, suppliers, and laborers that they will be paid. Performance and payment bonds are required only on projects of more than $100,000 and only from those contractors whose contracts on the project exceed $15,000. Section 3 of Senate Bill 417 provides that performance and payment bonds are not required on projects that cost more than $1,000,000. If, however, the project does exceed $1,000,000, each contractor on the project, not just those with contracts worth more than $15,000, must provide the bond. Section 3 also appears to eliminate the governmental unit's discretion in requiring performance and payment bonds when the project is less than the threshold amount ($100,000 under current law, $1,000,000 under the bill).

Section 4 makes this act effective upon becoming law.

S417-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 418

Short Title: Small Business Procurement Act. (Public)

Sponsors: Senators Shaw of Cumberland, Ballance; and Jordan.

Referred to: Commerce.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SECRETARY OF ADMINISTRATION TO SET BUSINESS SIZE STANDARDS AND APPLY THEM TO THE PROCUREMENT PROCEDURES TO PROMOTE INCREASED PROCUREMENTS FROM SMALL AND MEDIUM-SIZED BUSINESSES.

Whereas, current procurement procedures provide for the consolidation of estimates for supplies, materials, equipment, and contractual services and provide an institutional bias towards awarding State contracts to large businesses; and

Whereas, in this era of large corporate merging, restructuring, and downsizing with the attendant employee reductions, it is the small and medium-sized businesses that are providing for the new employment opportunities and economic growth in North Carolina; and

Whereas, the development of small and medium-sized businesses should be encouraged in North Carolina; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-52 reads as rewritten:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.**

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as

hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper of statewide circulation at least once and at least 10 days prior to the date designated for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission.

The Secretary shall establish business size standards for small and medium-sized businesses in this State and shall establish procedures for the division of estimates of supplies, materials, equipment, and contractual services or for allowable consolidation of bids from small and medium-sized firms to provide opportunities for these

businesses to bid on State contracts while still promoting sound purchasing management."

Section 2. G.S. 143-53(b) reads as rewritten:

"(b) In adopting the rules authorized by subsection (a) of this section, the Secretary shall include special provisions for the purchase of goods and services, which provisions are necessary to meet the documented training, work, or independent living needs of persons with disabilities according to the requirements of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, as amended. The Secretary may consult with other agencies having expertise in meeting the needs of individuals with disabilities in developing these provisions. These special provisions shall establish purchasing procedures that:

(1) Provide for the involvement of the individual in the choice of particular goods, service providers, and in the methods used to provide the goods and services;

(2) Provide the flexibility necessary to meet those varying needs of individuals that are related to their disabilities;

(3) Allow for purchase outside of certified sources of supply and competitive bidding when a single source can provide multiple pieces of equipment, including adaptive equipment, that are more compatible with each other than they would be if they were purchased from multiple vendors;

(4) Permit priority consideration for vendors who have the expertise to provide appropriate and necessary training for the users of the equipment and who will guarantee prompt service, ongoing support, and maintenance of this equipment;

(5) Permit agencies to give priority consideration to suppliers offering the earliest possible delivery date of goods or services especially when a time factor is crucial to the individual's ability to secure a job, meet the probationary training periods of employment, continue to meet job requirements, or avoid residential placement in an institutional setting; ~~and~~

(6) Allow consideration of the convenience of the provider's location for the individual with the ~~disability.~~ disability; and

(7) Allow consideration for encouraging the use of small and medium-sized businesses through the division of requirements and the consolidation of bids from these firms.

In developing these purchasing provisions, the Secretary shall also consider the following criteria: (i) cost-effectiveness, (ii) quality, (iii) the provider's general reputation and performance capabilities, (iv) substantial conformity with specifications and other conditions set forth for these purchases, (v) the suitability of the goods or services for the intended use, (vi) the personal or other related services needed, (vii) transportation charges, and (viii) any other factors the Secretary considers pertinent to the purchases in question."

Section 3. G.S. 143-54 reads as rewritten:

"**§ 143-54. Certification that bids were submitted without collusion.**

The Director of Administration shall require bidders to certify that each bid is submitted competitively and without collusion. The combining of bids pursuant to rules issued under subdivision (7) of G.S. 143-53 shall not be collusion. False certification is a Class I felony."

Section 4. The Department of Administration shall report to the General Assembly, prior to the 1998 Session of the General Assembly, on measures to encourage the use of small and medium-sized businesses to provide the supplies, materials, equipment, and contractual services required by the State. The study shall consider and propose new procedures and policies to eliminate the disincentives to small and medium-sized businesses from bidding on State contracts, such as expediting the prompt payment for completed contracts and elimination of any discounts for prompt payment.

In preparing this report, the Department of Administration shall contact the General Counsel of the United States Office of Small Business Advocacy to determine what has been done in other states to encourage small and medium-sized business participation in government contracts.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 418
Proposed Committee Substitute S418-PCS2647

Short Title: Small Business Procurement Act. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE SECRETARY OF ADMINISTRATION TO SET BUSINESS SIZE STANDARDS AND APPLY THEM TO THE PROCUREMENT PROCEDURES TO PROMOTE INCREASED PROCUREMENTS FROM SMALL AND MEDIUM-SIZED BUSINESSES.

Whereas, current procurement procedures provide for the consolidation of estimates for supplies, materials, equipment, and contractual services and provide an institutional bias toward awarding State contracts to large businesses; and

Whereas, in this era of large corporate merging, restructuring, and downsizing with the attendant employee reductions, it is the small and medium-sized businesses that are providing for the new employment opportunities and economic growth in North Carolina; and

Whereas, the development of small and medium-sized businesses should be encouraged in North Carolina; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-52 reads as rewritten:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.**

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions

of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper of statewide circulation at least once and at least 10 days prior to the date designated for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission.

The Secretary shall establish business size standards for small and medium-sized businesses in this State and shall establish procedures for the division of estimates of supplies, materials, equipment, and contractual services or for allowable consolidation of bids from small and medium-sized firms to provide opportunities for these

businesses to bid on State contracts while still promoting sound purchasing management."

Section 2. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(1) To canvass sources of supply, including sources of supply of materials and supplies with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided.

(2) To establish and enforce specifications which shall apply to all supplies, materials and equipment to be purchased or leased for the use of the State government or any of its departments, institutions or agencies.

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

When the award of any contract for contractual services exceeding a cost of one hundred thousand dollars ($100,000) requires negotiation with prospective contractors, the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in negotiation for the award of the contract. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term 'contractual services' as used in this subsection shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used herein shall not be deemed to refer to

contracts entered into or to be entered into as a result of a competitive bidding process.

(4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institutions or agencies. The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.

(5) To make provision for or to contract for all State printing, including all printing, binding, paper stock, recycled paper stock, supplies, and supplies with recycled content, or materials in connection with the same.

(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Human Resources, to private nonprofit agencies licensed or approved by the Department of Human Resources as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, and to counties, cities, towns, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. Prior to adopting rules and regulations under this subdivision, the Secretary of Administration may consult with the Advisory Budget Commission.

(7) **(See Editor's note)** To evaluate the nonprofit qualifications and capabilities of qualified work centers to manufacture commodities or perform services.

(8) To allow consideration for encouraging the use of small and medium-sized businesses through the division of requirements and the consolidation of bids from these firms."

Section 3. G.S. 143-54 reads as rewritten:

"**§ 143-54. Certification that bids were submitted without collusion.**

The Director of Administration shall require bidders to certify that each bid is submitted competitively and without collusion. The combining of bids pursuant to rules issued under subdivision (7) of G.S. 143-53 shall not be prima facie evidence of collusion. False certification is a Class I felony."

Section 4. The Department of Administration shall report to the General Assembly, prior to the 1998 Session of the General Assembly, on measures to encourage the use of small and medium-sized businesses to provide the supplies, materials, equipment, and contractual services required by the State. The study shall consider and propose new procedures and policies to eliminate the disincentives to small and medium-sized businesses from bidding on State contracts, such as expediting the prompt payment for completed contracts and elimination of any discounts for prompt payment.

In preparing this report, the Department of Administration shall contact the General Counsel of the United States Office of Small Business Advocacy to determine what has been done in other states to encourage small and medium-sized business participation in government contracts.

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

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March 27, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 418 (Small Business Procurement Act)

Senate Bill 418 requires the Secretary of Administration to establish standards defining small and medium size businesses. The Secretary is directed to develop procedures for dividing up the State's purchasing needs among these small and medium size businesses and allowing these vendors to consolidate their bids. This is to be done in accordance with sound purchasing policy. Section 2 of the bill adds these provisions to the laws governing vocational rehabilitation purchasing (G.S. 143-53(b)). In my opinion, the vocational rehabilitation purchasing statutes are not what the sponsor intended to amend.

Section 3 of the bill provides that if bidders consolidate their bids in accordance with the consolidation procedure to be developed by the Secretary, they will not be guilty of collusion under *State* law.

Section 4 requires the Department of Administration to report to the 1998 legislative session on ways that we can improve the opportunity of small and medium size businesses to get State contracts. The Department is to look at other states' efforts in this area.

The bill takes effect upon becoming law.

S418-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 208*

Short Title: Lodging Establishments/Sanitation. (Public)

Sponsors: Senators Foxx, Webster, Ballance, Kerr, McDaniel, Warren; Allran, Ballantine, Blust, Carrington, Clark, Cochrane, East, Forrester, Garwood, Hartsell, Horton, Hoyle, Kinnaird, Ledbetter, Page, Rand, Rucho, and Soles.

Referred to: Commerce.

February 20, 1997

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE SANITIZATION OF COOKING UTENSILS PROVIDED BY LODGING ESTABLISHMENTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-248(a3) reads as rewritten:

"(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

(1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and items;

(2) Requirements for:

a. Lighting and water supply;

b. Wastewater collection, treatment, and disposal facilities; and

c. Lavatory and toilet facilities, food protection, and waste disposal;

(3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact ~~surfaces;~~ surfaces. A requirement imposed under this subdivision to sanitize eating and drinking utensils and other food-contact surfaces does not apply to utensils

and surfaces in a lodging unit that provides reusable utensils for guests to prepare food while staying in the lodging unit.

(3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;

(4) The methods of food preparation, transportation, catering, storage, and serving;

(5) The health of employees;

(6) Animal and vermin control; and

(7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, 'food samples' means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

The rules shall contain a system for grading establishments, such as Grade A, Grade B, and Grade C. The rules shall be written in a manner that promotes consistency in both the interpretation and application of the grading system."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 208*
Proposed Committee Substitute S208-PCS1668

Short Title: Lodging Establishments/Sanitation. (Public)

Sponsors:

Referred to:

February 20, 1997

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE SANITIZATION OF COOKING UTENSILS PROVIDED BY LODGING ESTABLISHMENTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

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(2) Requirements for:

a. Lighting and water supply;

b. Wastewater collection, treatment, and disposal facilities; and

c. Lavatory and toilet facilities, food protection, and waste disposal;

(3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact ~~surfaces;~~ surfaces. A requirement imposed under this subdivision to sanitize multiuse eating and drinking utensils and other food-contact surfaces does not apply to utensils and surfaces provided in the guest room of the lodging unit for guests to prepare food while staying in the guest room.

(3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;

(4) The methods of food preparation, transportation, catering, storage, and serving;

(5) The health of employees;

(6) Animal and vermin control; and

(7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, 'food samples' means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

The rules shall contain a system for grading establishments, such as Grade A, Grade B, and Grade C. The rules shall be written in a manner that promotes consistency in both the interpretation and application of the grading system."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3-27-97

S. B. No. 208 PCS 001 Amendment No. #1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) CARPENTER

Sen.)

1 moves to amend the bill on page 2, line 1

2 ( ) WHICH CHANGES THE TITLE

3 by INSERTING BETWEEN THE WORDS "SANITIZE" AND

4 "EATING" THE WORD "MULTI-USE".

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SIGNED Robert C. Carpenter

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

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March 27, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel and Gann Watson, Co-Counsel, Joint Administrative Procedure Oversight Committee

RE: **Proposed Committee Substitute for Senate Bill 208 - Sanitization of Cooking Utensils Provided by Lodging Establishments** - Senator Foxx

The Proposed Committee Substitute for Senate Bill 208 exempts utensils provided in the guest room of a lodging unit for guests to prepare food while staying in the guest room from the normal sanitization requirements. This bill is a recommendation of the Joint Administrative Procedure Oversight Committee.

The purpose of this bill is to make consistent the application of law governing the sanitation of cooking utensils in certain lodging establishments. Under current law, certain lodging establishments are required to sanitize re-usable cooking and eating utensils when those utensils are provided in the lodging unit for guests to use in preparing their food (G.S. 130A-248). Condominiums and private homes that are rented to guests and that also provide re-usable cooking and eating utensils for guest use are exempt from regulation (G.S. 130A-250). Thus, although the service provided by both regulated and nonregulated establishments is the same, as is the risk of public exposure to disease, the application of law is more burdensome on the regulated establishment than on the nonregulated establishment. This bill exempts the regulated establishments from the sanitation requirement. Regulations pertaining to the cleaning of utensils and surfaces still apply. If enacted, this statutory change will be the basis for a temporary rule pertaining to the sanitation requirements.

Section 1 of the bill amends G.S. 130A-248(a3) to provide that sanitation requirements for eating and drinking utensils and other food contact surfaces do not apply to utensils and surfaces provided in the guest room of the lodging unit for guests to prepare food while staying in the guest room.

Section 2 makes the bill effective when it becomes law.

S208-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

From the Report to the 1997 General Assembly by the

JOINT ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE

FINDING NUMBER 5:

The following findings pertain to 15A NCAC 18A.1812, a rule adopted by the Health Services Commission.

Reasonable regulation of establishments that provide food and lodging services to the general public is necessary for the protection of the public health. However, regulation that is more restrictive than necessary to achieve its purpose can impose hardships on business that significantly outweigh the benefits to the general public. Moreover, a law that regulates a service provided by one entity more stringently than an identical service provided by a different type of entity should be carefully reviewed to ensure that there is justification for the inconsistency in regulation. Thus, the Committee finds as follows:

(1) Lodging establishments such as motels, hotels, and tourist homes are regulated under Article 8 of Chapter 130A of the General Statutes. Rules adopted under that Article include those pertaining to the sanitation of re-usable cooking and eating utensils provided by the establishment for use by guests in the preparation of food in their lodging unit.

(2) Condominiums and private homes are exempt from regulation under Article 8, G.S. 130A-250, although many of these apartments and homes are rented to the general public and provide the same level and type of re-usable cooking and eating utensils for use by renters in preparation of food in the rental unit.

(3) The public health concern about cleanliness of cooking and eating utensils is relevant to both types of entities. Yet one entity is required to sanitize the utensils, while the other entities are not. Moreover, the sanitatization process required of the regulated establishment is more burdensome than is reasonably necessary to protect the public health, especially given that public exposure to the relevant health risks is relatively the same in establishments that are regulated and in those that are exempt from regulation.

(4) The law should apply equitably to all lodging establishments that provide the same or substantially similar services to the general public, such that the public health concerns are addressed without unjustifiably burdensome regulation on one segment of business or industry.

RECOMMENDATION NUMBER 5:

The Committee recommends that General Assembly enact legislation which clarifies that rules pertaining to sanitation of eating and drinking utensils do not apply to utensils in lodging units that provide utensils for guests to use in preparing food while staying in the lodging unit. (SEE LEGISLATIVE PROPOSAL 5)

§ 130A-248. Regulation of food and lodging establishments.

(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of establishments that prepare or serve drink or food for pay and establishments that prepare and sell meat food products or poultry products. However, any establishment that prepares or serves food or drink to the public, regardless of pay, shall be subject to the provisions of this Article if the establishment that prepares or serves food or drink holds an ABC permit, as defined in G.S. 18B-101, meets any of the definitions in G.S. 18B-1000, and does not meet the definition of a private club as provided in G.S. 130A-247(2).

(a1) For the protection of the public health, the Commission shall adopt rules governing the sanitation of hotels, motels, tourist homes, and other establishments that provide lodging for pay.

(a2) For the protection of the public health, the Commission shall adopt rules governing the sanitation of private homes offering bed and breakfast accommodations to eight or fewer persons per night, and rules governing the sanitation of bed and breakfast inns as defined in G.S. 130A-247. In carrying out this function, the Commission shall adopt requirements that are the least restrictive so as to protect the public health and not unreasonably interfere with the operation of bed and breakfast inns.

(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

(1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and items;

(2) Requirements for:
   a. Lighting and water supply;
   b. Wastewater collection, treatment, and disposal facilities; and
   c. Lavatory and toilet facilities, food protection, and waste disposal;

(3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces;

(3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;

(4) The methods of food preparation, transportation, catering, storage, and serving;

(5) The health of employees;

(6) Animal and vermin control; and

(7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, "food samples" means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

The rules shall contain a system for grading establishments, such as Grade A, Grade B, and Grade C. The rules shall be written in a manner that promotes consistency in both the interpretation and application of the grading system.

(a4) .....

§ 130A-250. Exemptions.

The following shall be exempt from this Part:

(1) Establishments that provide lodging described in G.S. 130A-248(a1) with four or fewer lodging units;

(2) Condominiums;

(3) Establishments that prepare or serve food or provide lodging to regular boarders or permanent house guests only;

(4) Private homes that occasionally offer lodging accommodations, which may include the providing of food, for two weeks or less to persons attending special events, provided these homes are not bed and breakfast homes or bed and breakfast inns;

(5) Private clubs;

(6) Curb markets operated by the State Agricultural Extension Service;

(7) Establishments that prepare or serve food or drink for pay no more frequently than once a month for a period not to exceed two consecutive days;

(8) Establishments that put together, portion, set out, or hand out only drinks using single service containers that are not reused on the premises; and

(9) Markets where meat food products or poultry products are prepared and sold and which are under the continuous inspection by the North Carolina Department of Agriculture or the United States Department of Agriculture.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 425

Short Title: Refrigeration Contractors. (Public)

Sponsors: Senator Miller.

Referred to: Commerce.

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ARTICLE ON REFRIGERATION CONTRACTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-58(a) reads as rewritten:

"(a) As applied in this Article, "refrigeration trade or business" is defined to include all persons, firms or corporations engaged in the installation, maintenance, servicing and repairing of refrigerating machinery, equipment, devices and components relating thereto and within limits as set forth in the codes, laws and regulations governing refrigeration installation, maintenance, service and repairs within the State of North Carolina or any of its political ~~subdivisions, provided however, that this~~ subdivisions. This Article shall not apply to the replacement of lamps and fuses and to the installation and servicing of domestic household refrigerators and freezers or domestic ice-making appliances connected by means of attachment plug-in devices to suitable receptacles which have been permanently ~~installed, and provided, further, that the~~ installed. The provisions of this Article shall not repeal any wording, phrase, or paragraph as set forth in Article 2 of Chapter 87 of the General Statutes. ~~North Carolina General Statutes, Chapter 87, Article 2; and provided, further, that this~~ This Article shall not apply to employees of persons, firms, or corporations or persons, firms or corporations, not engaged in refrigeration contracting as herein defined, that install, maintain and service their own refrigerating machinery, equipment and devices. The provisions of this Article shall not apply to any person, firm or corporation engaged in the business of selling, repairing and installing any ~~air-conditioning units,~~ comfort cooling devices or ~~systems~~ systems. ~~for~~

~~the purpose of cooling offices, buildings, houses, works, manufacturing plants, or any machinery, manufactured article or processing of material.~~"

Section 2. G.S. 87-58(d) reads as rewritten:

"(d) In order to protect the public health, comfort and safety, the Board shall prescribe the standard of experience to be required of an applicant for license and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating cost, fundamentals of installation and design as they pertain to refrigeration; and as a result of the examination, the Board shall issue a certificate of license in refrigeration to applicants who pass the required examination and a license shall be obtained in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in the business of refrigeration contracting. The Board shall prescribe standards for and issue licenses for refrigeration contracting and for transport refrigeration contracting. A transport refrigeration contractor license is a specialty license that authorizes the licensee to engage only in transport refrigeration contracting. A refrigeration contractor licensee is authorized to engage in transport refrigeration and all other aspects of refrigeration contracting.

Each application for examination shall be accompanied by a check, post-office money order or cash in the amount of the annual license fee required by this Article. Regular examinations shall be given in the months of April and October of each year and additional examinations may be given at times the Board deems wise and necessary. Any person may demand in writing a special examination and upon payment by the applicant of the cost of holding the examination and the deposit of the amount of the annual license fee, the Board in its discretion will fix a time and place for the examination. ~~A person who fails to pass any examination shall not be reexamined until the next regular examination.~~"

Section 3. G.S. 87-60 reads as rewritten:

"**§ 87-60. Reissuance of revoked licenses; replacing lost or destroyed licenses.**

The Board may in its discretion reissue license to any person, firm or corporation whose license ~~may have been revoked: Provided, three or more members~~ was revoked if a majority of the Board ~~vote~~ votes in favor of such reissuance for reasons deemed sufficient by the Board. A new certificate of registration to replace any license which may be lost or destroyed may be issued subject to the rules and regulations of the Board."

Section 4. G.S. 87-62 reads as rewritten:

"**§ 87-62. Only one person in partnership or corporation need have license.**

(a) A corporation or partnership may engage in the business of refrigeration contracting ~~provided~~ if one or more persons connected with ~~such~~ the corporation or partnership is registered and licensed as herein ~~required; and provided such~~ required, and the licensed person ~~shall execute~~ executes all contracts, ~~exercise~~ exercises general supervision over the work done thereunder and ~~be~~ is responsible for compliance with all the provisions of this Article. The Board may determine the number of businesses and the proximity of the businesses one to another over which the licensed person may be responsible.

(b) For purposes of this section, the licensee's connection to the corporation or partnership shall be in the form of a written contract that is executed prior to the corporation or partnership engaging in refrigeration contracting.

(c) Nothing in this Article shall prohibit any employee from becoming licensed pursuant to the provisions thereof."

Section 5. G.S. 87-64 reads as rewritten:

"**§ 87-64. Examination and license fees; annual renewal.**

Each applicant for a license by examination shall pay to the Board of Refrigeration Examiners a nonrefundable examination fee in an amount not to exceed the sum of forty dollars ($40.00). In the event the applicant successfully passes ~~said~~ the examination, the examination fee ~~so paid~~ shall be applied to the license fee required of licensees for the current year in which the examination was taken and passed.

The license of every person licensed under the provisions of this statute shall be annually renewed. On or before November 1 of each year the Board shall cause to be mailed an application for renewal of license to every person who has received from the Board a license to engage in the refrigeration business, as heretofore defined. On or before January 1 of each year every licensed person who desires to continue in the refrigeration business shall forward to the Board a renewal fee in an amount not to exceed forty dollars ($40.00) together with the application for renewal. Upon receipt of the application and renewal fee the Board shall issue a renewal certificate for the current year. Failure to renew the license annually shall automatically result in a forfeiture of the right to engage in the refrigeration business. Any licensee who allows ~~his~~ the license to lapse may be reinstated by the Board upon payment of a fee not to exceed ~~forty-five dollars ($45.00); provided any~~ seventy-five dollars ($75.00). Any person who fails to renew ~~his~~ a license for two consecutive years shall be required to take and pass the examination prescribed by the Board for new applicants before being licensed to engage further in the refrigeration business."

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

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March 27, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr.
Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 425 (Refrigeration Contractors)

Senate Bill 425 amends the laws governing refrigeration contractors. Section 1 makes several grammatical changes and redefines the exemption for persons installing air conditioning units, devices, and systems in homes, businesses, plants, etc. The exemption will instead refer to persons installing "comfort cooling devices or systems."

Section 2 repeals a provision that currently prevents a person who fails the licensing exam from retaking the exam any earlier than the next regular scheduled examination, thus allowing that person to request a special exam (upon paying the appropriate fee) as first-time takers can do.

Section 3 revises the language concerning reissuance of a license to a person whose license was revoked. Current law requires three or more members to vote in favor of the reissuance in order for a person to obtain a reissued license. The bill will require a majority of the Board (4 members of the 7-member board).

Current law allows a corporation or partnership to engage in the business of refrigeration contracting as long as a licensed contractor is in charge and exercises general supervision over all work. Section 4 of the bill adds a provision that makes clear that the Board can determine how many businesses the licensed person can exercise supervision over and their proximity to one another. In addition, the licensed person's connection to the business entity must be spelled out in a written contract in advance.

Section 5 increases the maximum fee for reinstatement of a lapsed license from $5 to $75.

Section 6 makes this act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

Commerce Committee — March 27, 1991

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Jon Carr	Jordan Price
David Ferrell	Hafer, McNamara, Caldwell, McElroy & Cutler P.A.
Jim Hobbs	North Carolina Hotel/Motel Assn
Eugene Hafer	NCHMA
David Simmons	Zeb Alley, PA
Paul Stock	NC Bankers Assn
[illegible]	" " "
Glen Peterson	DOA
Fran Preston	NCRMA
Bernard Allen	SOS
Willie Riddick	DOR
Kim Smith	NCLM
Gary Walker	Alltel
Linda Small	DEH/DEHNR
[illegible]	NCBA
[illegible]	[illegible]
[illegible]	Electricities
[illegible]	DEHNR
[illegible]	DEHNR
[illegible]	NCHBA
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Commerce Committee — March 27, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Barbara Hayes	State Bd of Refrigeration
Jill Nichols	Legal Counsel, to St. Bd of Refrig.
BERRY JENKINS	NCDOT
Grayson Kelley	Atty Gen's Office - DOT

MINUTES
SENATE COMMERCE COMMITTEE
April 1, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, April 1, 1997. Eighteen members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles called the meeting to order.

The following bills were considered by the Committee:

HB 95 - AN ACT TO ESTABLISH A THREE-YEAR CYCLE FOR BUILDING CODE AMENDMENTS BEGINNING IN 1999 AND TO MAKE RELATED CHANGES CONCERNING THE ADMINISTRATION AND ENFORCEMENT OF THE STATE BUILDING CODE.

Representative Ives, the bill sponsor, explained the bill which establishes three-year cycles for State Building Code changes beginning in 1999 and makes several other related changes to the statutes governing the State Building Code. (See attached explanation of these changes.) Representative Ives said the bill was supported by everyone in the building industry. Senator Lee moved that House Bill 95 be given a favorable report. Motion carried.

SB 312, AN ACT TO REGULATE CHECK-CASHING BUSINESSES.

Senator Hoyle moved the adoption of a Committee Substitute offered by the bill sponsor. Motion carried. Senator Jordan, the bill sponsor, was then recognized to explain the bill. He said the bill adds a new Article 22 to Chapter 53 authorizing the Commissioner of Banks to regulate the business of check cashing. (See attached memorandum for full explanation of the legislation.)

Senator Hoyle moved that the Committee Substitute for Senate Bill 312 be given a favorable report. Motion carried. The Chairman stated that the bill would be re-referred to the Finance Committee.

Mr. Jerry Byrd, President of the N. C. Check Cashers' Association, said that his organization had been working with Senator Jordan and the Attorney General's office on the legislation and they were in agreement with it.

SB 527, AN ACT TO PROVIDE A LIVING WAGE BY INCREASING THE STATE MINIMUM WAGE.

Senator Jordan, the bill sponsor, moved that the bill be sent to a subcommittee. Motion carried. The Subcommittee consists of the following members:

Senator Ballance, Chairman
Senator Jordan
Senator Ledbetter
Senator Reeves
Senator Rand.

There being no further business, the meeting adjourned at 11:40 a.m.

Senator R. C. Soles, Jr., Chairman Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, April 01, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **95** Building Code Changes
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **208** Lodging Establishments/Sanitation
Draft Number: PCS 1668
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **418** Small Business Procurement Act
Draft Number: PCS2647
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, April 02, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **312** Regulate Check Cashing/AB.

Draft Number:	PCS7669
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 95
Committee Substitute Favorable 3/17/97

Short Title: Building Code Changes. (Public)

Sponsors:

Referred to:

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A THREE-YEAR CYCLE FOR BUILDING CODE AMENDMENTS BEGINNING IN 1999 AND TO MAKE RELATED CHANGES CONCERNING THE ADMINISTRATION AND ENFORCEMENT OF THE STATE BUILDING CODE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-138(a) reads as rewritten:

"(a) Preparation and Adoption. -- The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than 15 days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary.

The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Council shall not take final action on a proposed Code change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared. The change can become effective only in accordance with G.S. 143-138(d)."

Section 2. G.S. 143-138(c) reads as rewritten:

"(c) Standards to Be Followed in Adopting the Code. -- All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed ~~liberally~~ reasonably to those ends. Requirements of the Code shall conform to good engineering ~~practice, as evidenced generally by the~~ practice. The Council may use as guidance, but is not required to adopt, the requirements of the National Building Code of the American Insurance Association, formerly the National Board of Fire Underwriters, the Southern Standard Building Code of the Southern Building Code Congress, the Uniform Building Code of the Pacific Coast Building Officials Conference, the Basic Building Code of the Building Officials Conference of America, Inc., the National Electric Code, the Life Safety Code and Fire Prevention Code of the National Fire Protection Association, the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, the Boiler Code of the American Society of Mechanical Engineers, Standards of the American Insurance Association for the Installation of Gas Piping and Gas Appliances in Buildings, and standards promulgated by the United States of America Standards Institute, formerly the American Standards Association, Underwriters' Laboratories, Inc., and similar national agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety."

Section 3. G.S. 143-138(d) reads as rewritten:

"(d) Amendments of the Code. -- The Building Code Council may ~~from time to time~~ revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code. Code revisions and amendments adopted by the Building Code Council on or after September 1, 1997, but prior to July 1, 1998, shall become effective January 1, 1999. Code revisions and amendments adopted by the Building Code Council on or after July 1, 1998, but prior to July 1, 2001, shall become effective January 1, 2002. All future revisions and amendments shall be adopted prior to July 1 every three years after July 1, 2001, to become effective the first day of January of the following year. A revision or amendment may be made effective on an earlier date if determined by the Building Code Council to be necessary to address an imminent threat to the public's health, safety, or welfare.

Handbooks providing explanatory material on Code provisions shall be provided no later than January 1, 2000, and shall be updated with each trienniel revision of the Code or, in the discretion of the Council, more frequently. The Department may charge a reasonable fee for the handbooks."

Section 4. G.S. 143-137 reads as rewritten:

"**§ 143-137. Organization of Council; rules; meetings; staff; fiscal affairs.**

(a) First Meeting; Organization; Rules. -- Within 30 days after its appointment, the Building Code Council shall meet on call of the Commissioner of Insurance. The Council shall elect from its appointive members a chairman and such other officers as it may choose, for such terms as it may designate in its rules. The Council shall

adopt such rules not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint members to such committees as the work of the Council may require. In addition, the chairman shall establish and appoint ad hoc code revision committees to consider and prepare revisions and amendments to the Code volumes. Each ad hoc committee shall consist of members of the Council, licensed contractors, and design professionals most affected by the Code volume for which the ad hoc committee is responsible, and members of the public. The subcommittees shall meet upon the call of their respective chairs and shall report their recommendations to the Council.

(b) Meetings. -- The Council shall meet regularly, at least once every six months, at places and dates to be determined by the Council. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of two or more members of the Council. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Seven members shall constitute a quorum. All meetings shall be open to the public.

(c) Staff. -- Personnel of the Division of Engineering of the Department of Insurance shall serve as a staff for the Council. Such staff shall have the duties of

(1) Keeping an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work performed by or for the Council, and making these records available for public inspection at all reasonable times;

(2) Handling correspondence for the Council.

(d) Fiscal Affairs of the Council. -- All funds for the operations of the Council and its staff shall be appropriated to the Department of Insurance for the use of the Council. All such funds shall be held in a separate or special account on the books of the Department of Insurance, with a separate financial designation or code number to be assigned by the Department of Administration or its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as the expenditure of any other Department of Insurance funds. The Department of Insurance may hire such additional personnel as may be necessary to handle the work of the Building Code Council, within the limits of funds appropriated for the Council and with the approval of the Council."

Section 5. G.S. 143-138(e) reads as rewritten:

"(e) Effect upon Local Codes. -- The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt ~~a building code or building rules and regulations governing construction or~~ a fire prevention code within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than those permitted by G.S. 160A-436, shall be effective until they have been officially

approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. ~~While it remains effective, such approval shall be taken as conclusive evidence that a local code or local regulations supersede the State Building Code in its particular political subdivision. Whenever the Building Code Council adopts an amendment to the State Building Code, it shall consider any previously approved local regulations dealing with the same general matters, and it shall have authority to withdraw its approval of any such local code or regulations unless the local governing body makes such appropriate amendments to that local code or regulations as it may direct.~~ In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434."

Section 6. Article 9 of Chapter 143 of the General Statutes is amended by adding the following new section:

"**§ 143-138.1. Introduction and instruction of the North Carolina Building Code.**

Prior to the effective date of Code changes pursuant to G.S. 143-138, the State Building Code Council and Department of Insurance shall provide for instructional classes for the various trades affected by the Code. The Department of Insurance shall develop the curriculum for each class but shall consult the affected licensing boards and trade organizations. The curriculum shall include explanations of the rationale and need for each Code amendment or revision. Classes may also be conducted by, on behalf of, or in cooperation with licensing boards, trade associations, and professional societies. The Department of Insurance may charge fees sufficient to recover the costs it incurs under this section. The Council shall ensure that courses are accessible to persons throughout the State."

Section 7. G.S. 143-141(b) reads as rewritten:

"(b) Interpretations of the Code. -- The Building Code Council shall have the duty, in hearing appeals, to give interpretations of such provisions of the Building Code as shall be pertinent to the matter at issue. Where the Council finds that an enforcement agency was in error in its interpretation of the Code, it shall remand the case to the agency with instructions to take such action as it directs. Interpretations

by the Council and local enforcement officials shall be based on a reasonable construction of the Code provisions."

Section 8. Sections 3 and 6 of this act become effective September 1, 1997. The remainder of this act is effective when it becomes law.

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April 1, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel and Giles Perry, House State Government Committee Counsel

RE: **HOUSE BILL 39 - BUILDING CODE CHANGES** - Representative Ives

House Bill 95 establishes three-year cycles for State Building Code changes, beginning in 1999, and makes several other related changes to the statutes governing the State Building Code.

Section 1 is a conforming change that makes it clear that Code changes with a fiscal impact are subject to the same three-year cycle provided for in Section 3 of the bill.

Section 2 changes the standard for (judicial) interpretation of the Building Code from "construed liberally" to "construed reasonably". This section also clarifies that the Building Code Council may use the various national construction standards listed in the statutes for guidance, but it is not required to adopt them as the standard in the Code.

Section 3 provides that changes to the Building Code adopted by the Building Code Council on or after September 1, 1997, but before July 1, 1998, will become effective January 1, 1999. Thereafter changes will be made on a three-year cycle, unless determined by the Council to be needed earlier to address an imminent threat to public safety. Section 3 also requires an explanatory handbook on the Building Code to be provided no later than January 1, 2000, and updated at least every three years.

Section 4 directs the Chair of the Building Code Council to establish ad hoc revision committees that include persons in the building industry and the general public to consider and prepare revisions to the Code.

Section 5 eliminates local authority to adopt building codes, rules and regulations (local fire codes could continue to be adopted). Existing law permits the adoption of local building codes more stringent than the State Code when approved by the State

Building Code Council. Currently no approved local building codes are being used anywhere in the State.

Section 6 requires the Department of Insurance to provide instruction in new Code changes prior to the effective date of any changes. A fee may be charged by the Department to cover the cost of a course.

Section 7 makes conforming changes consistent with the changes made in Section 2 of the bill to specify that the Building Code Council and local enforcement officers shall base interpretations of the Code on "reasonable construction" of its provisions.

Section 3 (3-year Code revision cycle) and Section 6 (instruction on changes in Code) become effective September 1, 1997. The remainder of the bill will be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 312

Short Title: Regulate Check Cashing/AB. (Public)

Sponsors: Senators Jordan, Shaw of Guilford; Ballance and Lucas.

Referred to: Commerce.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO REGULATE CHECK-CASHING BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 53 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 22.

"Check-Cashing Businesses.

"**§ 53-275. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) 'Cashing' means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) 'Check-cashing service' means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

(3) 'Commission' means the State Banking Commission.

(4) 'Commissioner' means the Commissioner of Banks.

(5) 'Licensee' means a person or entity licensed to engage in a check-cashing business under this Article.

(6) 'Person' means an individual, partnership, association, or corporation.

"**§ 53-276. License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for consideration without first obtaining a license under this Article.

No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments.

"**§ 53-277. Exemptions.**

(a) This Article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; and

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service.

(b) A person licensed under Article 16 of this Chapter (Money Transmitters Act) is exempt from G.S. 53-276, 53-278, 53-279, and 53-283, but is deemed a licensee for purposes of the remaining provisions of this Article. This exemption does not apply to an agent of a person licensed under Article 16 of this Chapter.

"**§ 53-278. Application for license; investigation; application fee.**

(a) An application for licensure under this Article shall be in writing, under oath, and on a form prescribed by the Commissioner. The application shall set forth all of the following:

(1) The name and address of the applicant.

(2) If the applicant is a firm or partnership, the name and address of each member of the firm or partnership.

(3) If the applicant is a corporation, the name and address of each officer, director, registered agent, and principal.

(4) The addresses of the locations of the business to be licensed.

(5) Other information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner requires.

(b) The Commissioner may make such investigations as the Commissioner deems necessary to determine if the applicant has complied with all applicable provisions of this Article and State and federal law.

(c) The application shall be accompanied by payment of a two hundred fifty dollar ($250.00) application fee and a five hundred dollar ($500.00) investigation fee. These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part thereof.

(d) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars ($250.00) plus a fifty dollar ($50.00) fee for each branch location certificate issued under a license.

"**§ 53-279. Liquid assets required; other qualifications; denial of license; appeal to Commission.**

(a) Every licensee and applicant shall have and maintain liquid assets of at 'least twenty-five thousand dollars ($25,000) per licensee.

(b) Upon the filing and investigation of an application, and compliance by the applicant with G.S. 53-278, and this section, the Commissioner shall issue and deliver to the applicant the license applied for to engage in business under this Article at the locations specified in the application, provided that the Commissioner finds that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. If the Commissioner fails to make such findings, no license shall be issued, and the Commissioner shall notify the applicant of the denial and the reasons therefor. The applicant shall be entitled to an informal hearing on the denial provided the applicant requests the hearing in writing within 30 days after the Commissioner has mailed the notice required under this subsection to the applicant. In the event of a hearing, which shall be held in the offices of the Commissioner of Banks in Raleigh, the Commissioner shall reconsider the application and, after hearing, issue a written order granting or denying the application.

"§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.

(a) Notwithstanding any other provision of law, no check-cashing business licensed under this Article shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

(1) Three percent (3%) of the face amount of the check or five dollars ($5.00), whichever is greater, for checks issued by the federal government, State government, or any agency of the State or federal government, or any county or municipality of this State.

(2) Ten percent (10%) of the face amount of the check or five dollars ($5.00), whichever is greater, for personal checks.

(3) Five percent (5%) of the face amount of the check or five dollars ($5.00), whichever is greater, all other checks, or for money orders.

(b) A licensee shall ensure that in every location conducting business under a license issued under this Article, there is conspicuously posted and at all times displayed a notice stating the fees charged for cashing checks, drafts, and money orders. A licensee shall further ensure that notice of the fees currently charged at every location shall be filed with the Commissioner.

(c) Checks, drafts, and money orders cashed at every location conducting business under a license issued under this Article shall be deposited or presented for payment within three days of the date the check is cashed for the customer. A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee.

"§ 53-281. Record keeping; receipt requirements.

(a) Every person required to be licensed under this Article shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The Commissioner may examine the books, accounts, and records in order to determine whether the person is complying with this Article and rules adopted

pursuant thereto. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner.

(b) The licensee shall ensure that each customer cashing a check shall be provided a receipt showing the name or trade name of the licensee, the transaction date, amount of the check, and the fee charged.

"**§ 53-282. Prohibited practices.**

No person required to be licensed under this Article shall do any of the following:

(1) Charge fees in excess of those authorized under this Article.

(2) Engage in the business of making loans of money, credit, goods, or things, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items.

(3) Hold checks cashed by customers for more than three days before depositing or presenting the checks for payment.

(4) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.

(5) Conduct business at premises or locations other than locations licensed by the Commissioner.

(6) Engage in unfair, deceptive, or fraudulent practices.

(7) Cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

"**§ 53-283. Suspension and revocation of license; grounds; procedure.**

(a) The Commissioner may suspend or revoke any license or licenses issued pursuant to this Article if, after notice and opportunity for hearing, the Commissioner issues written findings that the licensee has engaged in any of the following conduct:

(1) Violated this Article or applicable State or federal law or rules.

(2) Made a false statement on the application for a license under this Article.

(3) Refused to permit investigation by the Commissioner authorized under this Article.

(4) Failed to comply with an order of the Commissioner.

(5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.

(6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(b) The Commissioner may not suspend or revoke any license issued under this Article unless the licensee has been given notice and opportunity for hearing in accordance with Article 3A of Chapter 150B of the General Statutes.

"**§ 53-284. Cease and desist orders.**

If the Commissioner determines that a person required to be licensed under this Article has violated this Article or rules adopted pursuant to it, then the Commissioner may, upon notice and opportunity for hearing in accordance with Article 3A of Chapter 150B of the General Statutes, order the person to cease and desist from the violations and to comply with this Article. The Commissioner may enforce compliance with an order issued pursuant to this section by the imposition and collection of civil penalties authorized under this Article.

"**§ 53-285. Civil penalties and restitution.**

The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties shall not exceed one thousand dollars ($1,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers.

"**§ 53-286. Criminal penalties.**

A violation of G.S. 53-276 by a person required to obtain a license under this Article is a Class I felony. Each transaction involving the unlawful cashing of a check, draft, or money order constitutes a separate offense.

"**§ 53-287. Commissioner to adopt rules.**

The Commissioner may adopt rules necessary to carry out the purposes of this Article, to provide for the protection of the public, and to assist licensees in interpreting and complying with this Article.

"**§ 53-288. Commission may review rules, orders, or acts by Commissioner.**

The Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article, and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done."

Section 2. This act becomes effective October 1, 1997, and applies to acts or omissions occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 312
Proposed Committee Substitute
S312-CSRO-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Regulate Check Cashing/AB. (Public)

Sponsors:

Referred to:

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO REGULATE CHECK-CASHING BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 53 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 22.

"Check-Cashing Businesses.

"§ 53-275. Definitions.

As used in this Article, unless the context clearly requires otherwise, the term:

(1) 'Cashing' means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) 'Check-cashing service' means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

(3) 'Commission' means the State Banking Commission.

(4) 'Commissioner' means the Commissioner of Banks.

(5) 'Licensee' means a person or entity licensed to engage in a check-cashing business under this Article.

(6) 'Person' means an individual, partnership, association, or corporation.

"§ 53-276. License required.

No person or other entity may engage in the business of cashing checks, drafts, or money orders for consideration without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments.

"§ 53-277. Exemptions.

(a) This Article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; and

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service.

(b) A person licensed under Article 16 of this Chapter (Money Transmitters Act) is exempt from G.S. 53-276, 53-278, 53-279, and 53-284, but is deemed a licensee for purposes of the remaining provisions of this Article. This exemption does not apply to an agent of a person licensed under Article 16 of this Chapter.

"§ 53-278. Application for license; investigation; application fee.

(a) An application for licensure under this Article shall be in writing, under oath, and on a form prescribed by the Commissioner. The application shall set forth all of the following:

(1) The name and address of the applicant.

(2) If the applicant is a firm or partnership, the name and address of each member of the firm or partnership.

(3) If the applicant is a corporation, the name and address of each officer, director, registered agent, and principal.

(4) The addresses of the locations of the business to be licensed.

(5) Other information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner requires.

(b) The Commissioner may make such investigations as the Commissioner deems necessary to determine if the applicant has complied with all applicable provisions of this Article and State and federal law.

(c) The application shall be accompanied by payment of a two hundred fifty dollar ($250.00) application fee and a five hundred dollar ($500.00) investigation fee. These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part thereof.

(d) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars ($250.00) plus a fifty dollar ($50.00) fee for each branch location certificate issued under a license.

"§ 53-279. Liquid assets required; other qualifications; denial of license; hearing.

(a) Every licensee and applicant shall have and maintain liquid assets of at least fifty thousand dollars ($50,000) per licensee.

(b) Upon the filing and investigation of an application, and compliance by the applicant with G.S. 53-278, and this section, the Commissioner shall issue and deliver to the applicant the license applied for to engage in business under this Article at the locations specified in the application, provided that the Commissioner finds that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. If the Commissioner fails to make such findings, no license shall be issued, and the Commissioner shall notify the applicant of the denial and the reasons therefor. The applicant shall be entitled to an informal hearing on the denial provided the applicant requests the hearing in writing within 30 days after the Commissioner has mailed the notice required under this subsection to the applicant. In the event of a hearing, which shall be held in the offices of the Commissioner of Banks in Raleigh, the

Commissioner shall reconsider the application and, after hearing, issue a written order granting or denying the application.

"§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.

(a) Notwithstanding any other provision of law, no check-cashing business licensed under this Article shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

(1) Three percent (3%) of the face amount of the check or five dollars ($5.00), whichever is greater, for checks issued by the federal government, State government, or any agency of the State or federal government, or any county or municipality of this State.

(2) Ten percent (10%) of the face amount of the check or five dollars ($5.00), whichever is greater, for personal checks.

(3) Five percent (5%) of the face amount of the check or five dollars ($5.00), whichever is greater, for all other checks, or for money orders.

(b) A licensee may not advance monies on the security of a check unless the account from which the check being presented is drawn is legitimate, open, and active. Except as provided by G.S. 53-281(a), any licensee who cashes a check for a fee shall deposit the check not later than three business days from the date the check is cashed.

(c) A licensee shall ensure that in every location conducting business under a license issued under this Article, there is conspicuously posted and at all times displayed a notice stating the fees charged for cashing checks, drafts, and money orders. A licensee shall further ensure that notice of the fees currently charged at every location shall be filed with the Commissioner.

(d) A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee.

"§ 53-281. Postdated or delayed deposit checks.

(a) A licensee may defer the deposit of a personal check cashed for a customer for up to 31 days pursuant to the provisions of this section.

(b) The face amount of any postdated or delayed deposit check cashed pursuant to this section shall not exceed three hundred dollars ($300.00).

(c) Each postdated or delayed deposit check cashed by a licensee shall be documented by a written agreement that has been

signed by the customer and the licensee. The written agreement shall contain a statement of the total amount of any fees charged, expressed both as a dollar amount and as an effective annual percentage rate (APR). The written agreement shall authorize the licensee to defer deposit of the personal check until a specific date not later than 31 days from the date the check is cashed.

(d) A licensee shall not directly or indirectly charge any fee or other consideration for cashing a postdated or delayed deposit check in excess of fifteen per cent (15%) of the face amount of the check.

(e) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same licensee or any affiliate of the licensee. A licensee shall not, for any consideration, renew or otherwise extend any postdated or delayed check or withhold such check from deposit for any period beyond the time set forth in the written agreement with the customer.

"§ 53-282. Record keeping; receipt requirements.

(a) Every person required to be licensed under this Article shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner.

(b) The licensee shall ensure that each customer cashing a check shall be provided a receipt showing the name or trade name of the licensee, the transaction date, amount of the check, and the fee charged.

(c) The Commissioner may examine the books, accounts, and records in order to determine whether the person is complying with this Article and rules adopted pursuant thereto. The cost of the examination shall be paid by the licensee and shall be determined by applying the hourly rate for special examinations adopted by the State Banking Commission by regulation.

"§ 53-283. Prohibited practices.

No person required to be licensed under this Article shall do any of the following:

(1) Charge fees in excess of those authorized under this Article.

(2) Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or

accepting deposits or bailments of money or items, except as expressly provided by G.S. 53-281.

(3) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.

(4) Conduct business at premises or locations other than locations licensed by the Commissioner.

(5) Engage in unfair, deceptive, or fraudulent practices.

(6) Cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

"§ 53-284. Suspension and revocation of license; grounds; procedure.

(a) The Commissioner may suspend or revoke any license or licenses issued pursuant to this Article if, after notice and opportunity for hearing, the Commissioner issues written findings that the licensee has engaged in any of the following conduct:

(1) Violated this Article or applicable State or federal law or rules.

(2) Made a false statement on the application for a license under this Article.

(3) Refused to permit investigation by the Commissioner authorized under this Article.

(4) Failed to comply with an order of the Commissioner.

(5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.

(6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(b) The Commissioner may not suspend or revoke any license issued under this Article unless the licensee has been given notice and opportunity for hearing in accordance with Article 3A of Chapter 150B of the General Statutes.

"§ 53-285. Cease and desist orders.

If the Commissioner determines that a person required to be licensed under this Article has violated this Article or rules adopted pursuant to it, then the Commissioner may, upon notice and opportunity for hearing in accordance with Article 3A of Chapter 150B of the General Statutes, order the person to cease

and desist from the violations and to comply with this Article, The Commissioner may enforce compliance with an order issued pursuant to this section by the imposition and collection of civil penalties authorized under this Article.

"§ 53-286. Civil penalties and restitution.

The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties shall not exceed one thousand dollars ($1,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers.

"§ 53-287. Criminal penalties.

A violation of G.S. 53-276 by a person required to obtain a license under this Article is a Class I felony. Each transaction involving the unlawful cashing of a check, draft, or money order constitutes a separate offense.

"§ 53-288. Commissioner to adopt rules.

The Commissioner may adopt rules necessary to carry out the purposes of this Article, to provide for the protection of the public, and to assist licensees in interpreting and complying with this Article.

"§ 53-289. Commission may review rules, orders, or acts by Commissioner.

The Commission shall have full authority to review any rule, regulation, order, or act of the Commissioner done pursuant to or with respect to the provisions of this Article, and any person aggrieved by any such rule, regulation, order, or act may appeal to the Commission for review upon giving notice in writing within 20 days after such rule, regulation, order, or act complained of is adopted, issued, or done."

Section 2. The Commissioner of Banks shall report to the 2001 General Assembly on the practices of licensees with regard to checks cashed pursuant to the provisions of G.S. 53-281, including any evidence as to consumer complaints, unfair or deceptive trade practices, and the frequency of repeat use by individuals of postdated or delayed deposit checks. It is the intent of the General Assembly that the sunset contained in section 3 of this act be repealed if there is no evidence of excessive complaints or unfair and deceptive trade practices.

Section 3. This act becomes effective October 1, 1997, and the provisions of G.S. 53-281 shall expire on July 31, 2001.

North Carolina General Assembly
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March 31, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **Senate Bill 312 - Regulate Check Cashing/AB**
(Proposed Committee Substitute)

Senate Bill 312 adds a new Article 22 to Chapter 53 authorizing the Commissioner of Banks to regulate the business of check cashing. The bill requires all persons engaged in the business of check cashing to obtain a license from the Commissioner. Applications for licenses must be on a form prescribed by the Commissioner and must be accompanied by a $250 application fee and a $500 one-time investigation fee. Licenses must be renewed annually at a fee of $250 plus a $50 fee for each branch operated under the license.

The bill exempts the following entities from the licensing requirement: (1) banks, savings institutions, credit unions or farm credit systems, and (2) retailers who occasionally cash checks and charge a fee of no more than two dollars for the service. Licensed money transmitters are exempt from the licensing provisions of the act but are subject to the remaining provisions.

The maximum fees which may be charged for check cashing services are set forth as follows:

1. the greater of $5 or 3% of the face amount of a check issued by a governmental entity.
2. the greater of $5 or 10% of the face amount of a personal check.
3. the greater of $5 or 5% of the face amount of all other checks or money orders.

The following activities are deemed prohibited practices under the act;

1. charging fees in excess of the statutory limits.
2. making loans.
3. conducting business at a location other than as approved in the license.
4. false, misleading or deceptive advertising.
5. unfair, deceptive or fraudulent practices.
6. cashing checks made payable to an entity without written authorization naming a natural person to accept the proceeds.

The Commissioner of Banks is authorized to suspend or revoke licenses, issue cease and desist orders, and impose civil penalties of up to $1,000 for violations of the act. In addition, conducting a check cashing business without a license is punishable as a Class I felony. The Commissioner is authorized to adopt rules to implement the act and persons aggrieved by a rule order or act of the Commissioner may appeal to the Banking Commission.

The proposed committee substitute makes several significant changes to the bill. First, it raises the liquid assets requirement from $25,000 to $50,000. This is the amount which all licensees must maintain to be eligible for a license. Next, it adds a new section 53-281 which allows licensees to cash postdated or delayed deposit checks so long as the face amount does not exceed $300. The customer and the licensee must enter a written agreement which states the fees charged, both as a dollar amount and as an effective annual percentage rate, and the deposit may not be deferred for more than 31 days. A licensee may not charge a fee in excess of 15% for cashing a postdated or delayed deposit check and checks cashed under this section may not be repaid by the proceeds of another check cashed by the same licensee or an affiliate of that licensee. Section 3 of the bill provides that this provision will sunset on July 31, 2001.

The committee substitute also adds a new section 2 to the bill which directs the Commissioner of Banks to report to the 2001 General Assembly on the practices of licensees with regard to the provision relating to postdated and delayed deposit checks. The section notes that it is the intent of the General Assembly to remove the sunset on this provision if there is not evidence of excessive complaints or unfair and deceptive practices.

The act becomes effective October 1, 1997 and the provisions of G.S. 53-281 expire on July 31, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 527

Short Title: Increase State Minimum Wage. (Public)

Sponsors: Senator Jordan.

Referred to: Commerce.

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A LIVING WAGE BY INCREASING THE STATE MINIMUM WAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.3(a) reads as rewritten:

"(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least ~~three dollars and eighty cents ($3.80) per hour effective January 1, 1992, and four dollars and twenty-five cents ($4.25) per hour effective January 1, 1993,~~ seven dollars and fifty cents ($7.50) per hour, except as otherwise provided in this section."

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

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April 1, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 527
Increase State Minimum Wage

Senate bill 527 increases the *State* minimum wage from $4.25 per hour to $7.50 per hour. The increase would take effect upon the bill becoming law.

The *State* minimum wage applies to employment in small businesses (those with less than $500,000 in gross sale or business) that are not engaged in interstate commerce. The *federal* minimum wage law applies to all other businesses. The federal minimum wage increased to $4.75 per hour last October and will increase to $5.15 per hour in September, 1997.

The bill would take effect when it becomes law.

S527-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **April 1, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	Attorney - Raleigh
Jerry Roberts	C.U.C.A.
	NCSPP
	Hayden Elect
	Hyatt Ryan
Paul Stock	NC Bankers Assn.
Ray Farmer	American Insurance Association
Alan Miles	Bailey & Dixon LLP
John Bowdish	Zeb Talley PA
Chris Scott	NC AFL-CIO
Andy Romanet	N.C.L.M.
Dave Sligh	Carolinas AGC

MINUTES
SENATE COMMERCE COMMITTEE
April 8, 1997

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, April 8, 1997. Sixteen members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles called the meeting to order.

The following bills were considered by the Committee:

SB 253, AN ACT TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN NORTH CAROLINA, TO MAKE THE OFFERING OF TELEPHONE SALES RECOVERY SERVICES A CRIMINAL OFFENSE, AND TO RESTRICT THE TIME PERIOD WITHIN WHICH UNSOLICITED AUTOMATIC DIALING AND RECORDED MESSAGES MAY BE MADE BY PHONE.

A Committee Substitute was proposed for the bill and Senator Cochrane moved that the Committee Substitute for Senate Bill 253 be adopted. Motion carried. Senator Winner stated that the Committee Substitute bill makes changes to the original bill that are simply clarifying in nature; it does not make any substantive changes. She said that 29 states now have laws to regulate telephonic sellers and it seems that they tend to seek out states for their offerings who have no legislation in this regard. (See attached memorandum for full explanation of the bill.)

Mrs. Polly Williams with the Legislative Committee of the AARP spoke in support of the bill. She also represented the Triangle OWL.

Senator Ballantine spoke against the registering and bonding portion of the bill. Mr. David Kirkman, Assistant Attorney General, responded to Senator Ballantine saying it would make it far easier to go after unscrupulous telemarketers if these provisions were in the bill. He said now an investigation cannot begin in a scam until a victim comes forward and voices the complaint. With the new bill, a group could be investigated early on.

The Secretary of State, Elaine Marshall, and the Deputy Secretary of State, Scott Templeton, said they had been working with the Attorney General's Office on the legislation and feel they can support it. They indicated enactment of the legislation would require additional staff in the Office of Secretary of State.

Senator Reeves moved that the Committee Substitute for Senate Bill 253 be given a favorable report. Motion carried. The Chairman indicated the bill would need to be re-referred to Finance and then Appropriations.

SB 438, AN ACT TO AMEND THE ENFORCEMENT PROCEDURES RELATED TO THE REGISTRATION OF SECURITIES AND TO INVESTMENT ADVISERS AND TO ESTABLISH THE CONFIDENTIALITY OF RECORDS RELATING TO CRIMINAL INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS.

Senator Reeves, the bill sponsor, offered a Committee Substitute for SB 438 and moved it adoption. Motion carried. He said the bill was an agency bill requested by the Secretary of State's Office. It amends the NC Securities Act and the Investment Advisors Act by clarifying when a hearing on an order issued by the Secretary of State may be requested, and making clear that records of criminal investigations conducted by the Secretary under these acts are not public records as any other criminal investigation, and civil investigation records are not public records until the investigations are finished.(See attached memorandum for explanation of the bill.) Mr. David Massey, General Counsel of the Secretary of State's Office, spoke briefly on the necessity for the legislation.

Senator Hartsell moved that the Committee Substitute for SB 438 be given a favorable report. Motion carried.

SB 439, AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND THE INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.

Senator Reeves briefly explained the bill saying that it amends the North Carolina Securities Act to conform North Carolina law with 1996 changes made in federal securities laws involving the registration of securities dealers and sellers, and investment advisers. This bill is also a recommendation of the Secretary of State's Office. Since the bill was placed on the Committee agenda, it has come to his attention that an amendment needs to be written before final consideration. Senator Soles ruled that the bill be withdrawn from the Agenda and considered at Thursday's meeting to allow time for preparation of the amendment.

There being no further business, the meeting adjourned at 11:50 a.m.

Senator R. C. Soles, Jr., Chairman

Mrs. Joan R. Leatherman
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, April 08, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **253** Telephone Consumer Protection 2/AB.

Draft Number:	PCS8626
Sequential Referral:	None
Recommended Referral:	Finance and then to Appropriations
Long Title Amended:	Yes

S.B. **438** Securities /Investment Advisers Enforcement.

Draft Number:	PCS1701
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 253

Short Title: Telephone Consumer Protection 2/AB. (Public)

Sponsors: Senators Winner; Gulley, Lee, and Odom.

Referred to: Commerce.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN NORTH CAROLINA, TO MAKE THE OFFERING OF TELEPHONE SALES RECOVERY SERVICES A CRIMINAL OFFENSE, AND TO RESTRICT THE TIME PERIOD WITHIN WHICH UNSOLICITED AUTOMATIC DIALING AND RECORDED MESSAGES MAY BE MADE BY PHONE.

The General Assembly of North Carolina enacts:

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

"ARTICLE 33.

"Telephonic Seller Registration and Bond Requirement.

"**§ 66-260. Definitions.**

As used in this Article, unless the context requires otherwise:

(1) 'Gift or prize' means any premium, bonus, award, or any other thing of value.

(2) 'Item' means any good or any service. 'Item' includes coupon books, vouchers, or certificates that are to be used with businesses other than the seller's business.

(3) 'Owner' means a person who owns or controls ten percent (10%) or more of the equity of, or otherwise has a claim to ten percent (10%) or more of the net income of, a telephonic seller.

(4) 'Person' includes any individual, firm, association, corporation, partnership, joint venture, or any other business entity.

(5) 'Principal' means an owner, an executive officer of a corporation, a general partner of a partnership, a sole proprietor of a sole proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(6) 'Purchaser' or 'prospective purchaser' means a person who is solicited to become obligated to a telephonic seller or to make any donation or gift to any person represented by the telephonic seller.

(7) 'Room operator' means any principal, employee, or agent responsible for the operational management and supervision of facilities from which telephonic sales calls are made or received.

(8) 'Salesperson' means any individual employed, appointed, or authorized by a telephonic seller, whether referred to by the telephonic seller as an agency, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the telephonic seller.

(9) 'Secretary' means the Office of the Secretary of State.

(10) 'Telephone solicitation' or 'attempted telephone solicitation' means any telephonic communication designed to persuade any person to purchase goods or services, to enter a contest, or to contribute to a charity or a person represented to be a charity, regardless of whether the telephone call initiating the solicitation is placed by the (i) telephonic seller or (ii) a person responding to any unsolicited notice or notices sent or provided by or on behalf of the seller, which notice or notices represents to the recipient that he or she has won a gift or prize, that the recipient may obtain or qualify for credit by contacting the seller, or that the seller has buyers interested in purchasing the recipient's property.

(11) 'Telephonic seller' or 'seller' means a person who, directly or through salespersons, causes a telephone solicitation or attempted telephone solicitation to occur. 'Telephonic seller' and 'seller' does not include any of the following:

a. A person who is offering or selling a registered security and is licensed to sell such security in North Carolina.

b. Any person conducting sales or solicitations on behalf of a licensee of the North Carolina Utilities Commission or the Federal Communications Commission.

c. Any insurance agent or broker who is properly licensed by the Department of Insurance and who is soliciting within the scope of the agent's or broker's license or any employee or independent contractor of an insurance company licensed by the Department of Insurance conducting sales or solicitations on behalf of that company.

d. Any federally chartered bank or savings institution or any bank or savings institution properly licensed by the State or subject to federal regulating authorities.

e. Any organization already accorded section 501(c)(3) nonprofit status under the Internal Revenue Code, any 'charitable solicitor' properly licensed under Article 2 of Chapter 131F of the General Statutes, or any person exempt under G.S. 131F-3 from Chapter 131F of the General Statutes.

f. A person who periodically issues and delivers catalogs to potential purchasers and the catalog:

1. Includes a written description or illustration and the sales price of each item offered for sale;
2. Includes at least 24 full pages of written material or illustrations;
3. Is distributed in more than one state; and
4. Has an annual circulation of not less than 250,000 customers.

g. A person engaging in a commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of a like nature.

h. A person primarily soliciting the sale of a newspaper of general circulation, a publisher of a magazine or other periodical of general circulation, or an agent of such a publisher acting pursuant to a written agency agreement.

i. A person soliciting the sale of services provided by a cable television system operating under the authority of a local franchise.

j. Any passenger airline licensed by the Federal Aviation Administration.

k. Any person holding a real estate broker's or sales agent's license under Chapter 93A of the General Statutes and who is soliciting within the scope of the broker's or agent's license.

l. Any person soliciting a transaction regulated by the Commodities Futures Trading Commission, provided the person is registered or temporarily licensed by the Commodities Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. § 1 et seq.

m. Any person soliciting a purchase from a business, provided the person soliciting makes reasonable efforts to ensure that the person solicited has actual authority to bind the business to a purchase agreement.

n. A foreign corporation which has for the preceding 12 months held and maintained a certificate of authority to do business in this State pursuant to Article 15 of Chapter 55 of the General Statutes and which only does business in this State using the name set forth in the certificate of authority.

o. An issuer or a subsidiary of an issuer that has a class of securities which is subject to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. section 781) and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.

p. A person soliciting the sale of food, seeds, or plants when a sale does not involve an amount in excess of one hundred dollars ($100.00) directed to a single address.

q. A person soliciting:

1. Without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation;
2. Who does not make the major sales presentation during the telephone solicitation but arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser; and
3. Who does not cause an individual to go to the prospective purchaser to collect payment for the purchase or to deliver any item purchased directly following the telephone solicitation; or
4. Who offers to send the purchaser descriptive literature and does not require payment prior to the purchaser's review of the descriptive literature.

r. A person soliciting the purchase of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made.

s. A book, video, or record club or contractual plan or arrangement:

1. Under which the seller provides the consumer with a form with which the consumer can instruct the seller not to ship the offered merchandise.
2. Which is regulated by the Federal Trade Commission trade regulation concerning 'use of negative option plans by sellers in commerce'.
3. Which provides for the sale of books, records, or videos which are not covered under paragraphs 1. or

2. of this sub-subdivision, including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

t. A person who for at least two years has been operating under the same name as that used in connection with its telemarketing operations and retail establishment in North Carolina where consumer goods are displayed and offered for sale on a continuing basis if a majority of the person's business involves the buyers obtaining services or products at the person's retail establishment.

u. A person:

1. Who provides telephone solicitation services under contract to sellers;
2. Who has been operating continuously for at least three years under the same business name; and
3. For whom at least seventy-five percent (75%) of the person's contracts are performed on behalf of other persons exempt under this section.

v. A person soliciting political contributions in accordance with Article 22A of Chapter 163 of the General Statutes.

"**§ 66-261. Registration of telephonic sellers.**

(a) Not less than 10 days before commencing telephone solicitations in this State, a telephonic seller shall register with the Secretary by filing the information required in G.S. 66-253 and paying a filing fee of one hundred dollars ($100.00). A telephonic seller is doing business in this State if it solicits or attempts to solicit prospective purchasers from locations in this State or solicits or attempts to solicit prospective purchasers who are located in this State.

(b) The information required in G.S. 66-253 shall be submitted on a form provided by the Secretary and shall contain the notarized signatures of each principal of the telephonic seller.

(c) Registration of a telephonic seller shall be valid for one year from the effective date thereof and may be annually renewed by making the filing required in G.S. 66-253 and paying the filing fee of one hundred dollars ($100.00).

(d) Whenever, prior to expiration of a seller's annual registration, there is a material change in the information required by G.S. 66-253, the seller shall, within 10 days after the material change, file an addendum with the Secretary updating the information.

"**§ 66-262. Filing information.**

(a) Each filing submitted to the Secretary shall contain all of the following information:

(1) The name or names, including any assumed names, under which the telephonic seller is doing or intends to do business in this State.
(2) The telephonic seller's business form and place of organization and, if the seller is a corporation, copies of its articles of incorporation and bylaws and amendments thereto, or if a partnership, a copy of the partnership agreement.
(3) Complete street address of the telephonic seller's principal place of business.
(4) The complete street address of each location from which telephone solicitations are placed by the telephonic seller.
(5) A listing of all telephone numbers to be used by the telephonic seller, including area codes, and the complete street address of the business premises served by each number.
(6) The name and title of each principal.
(7) The complete street address of the residence, the date of birth, and the social security number of each principal.
(8) The true name, street address, date of birth, and the social security number of each room operator, together with the room operator's full employment history during the preceding two years.
(9) The name and address of all banks or savings institutions where the telephonic seller maintains deposit accounts.
(10) The name and address of each long-distance telephone carrier used by the telephonic seller.
(11) A summary of each civil or criminal proceeding brought against the telephonic seller, any of its principals, or any of its room operators during the preceding five years by federal, State, or local officials relating to telephonic sales practices of each. The summary shall include the date each action was commenced, the criminal or civil charges alleged, the case caption, the court file number, the court venue, and the disposition of the action. For purposes of this section, a 'civil proceeding includes' means assurances of voluntary compliance, assurances of discontinuance, consent judgments, and similar agreements executed with federal, State, or local officials.

(b) For purposes of this section, 'street address' does not include a private mail service address.

"**§ 66-263. Bond requirement; prizes and gifts.**

(a) At least 10 days before the commencement of any promotion offering any gift or prize with an actual or represented market value of five hundred dollars ($500.00) or more, the telephonic seller shall notify the Secretary in writing of the details of the promotion, fully describing the nature and number of all gifts or prizes and their current market value, the seller's rules and regulations governing the promotion, and the date the gifts or prizes are to be awarded. All gifts or prizes offered shall be awarded. Concurrent with notifying the Secretary under this subsection, the

telephonic seller shall post a bond with the Secretary for the market value or the represented value, whichever is greater, of all gifts or prizes represented as available under the promotion. The bond must be issued by a surety company authorized to do business in this State. The bond shall be in favor of the State of North Carolina for the benefit of any person entitled to receive a gift or prize under the promotion who did not receive it within 30 days of the specified date of award. The amount recoverable by any person under the bond shall not exceed the market value, the represented value of the gift or prize, or the amount of any consideration or contribution paid by that person in response to the telephone solicitation, whichever is greatest.

(b) Within 45 days after the specified date of the award of the gift or prize, the seller shall provide, in writing, to the Secretary, proof that the gifts or prizes were awarded. The writing shall include the name, address, and telephone number of all persons receiving awards or prizes. The bond shall be maintained until the Secretary confirms the awards.

(c) The Attorney General, on behalf of any injured purchaser, or any purchaser who is injured by the bankruptcy of the telephonic seller or its breach of any agreement entered into in its capacity as a telephonic seller, may initiate a civil action to recover against the bond.

"**§ 66-264. Calls made to minors.**

A telephonic seller must inquire as to whether the prospective purchaser it is contacting is under 18 years of age. If the prospective purchaser is under 18 years of age, the telephonic seller must discontinue the call immediately.

"**§ 66-265. Offers of gifts or prizes.**

(a) It shall be unlawful for any telephonic seller to make a telephone solicitation or attempted telephone solicitation involving any gift or prize when the solicitation or attempted solicitation:

(1) Requests or directs the consumer to further the transaction by calling a 900 number or a pay per call number.

(2) Requests or directs the consumer to send any payment or make a donation in order to collect the gift or prize.

(3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

(b) Notwithstanding subsection (a) of this section, a telephonic seller may offer a gift or prize in connection with the bona fide sale of a product or service.

"**§ 66-266. Penalties.**

(a) Any violation of this Article shall constitute an unfair and deceptive trade practice in violation of G.S. 75-1.1.

(b) In an action by the Attorney General against a telephonic seller for violation of this Article, or for any other act or practice by a telephonic seller constituting a violation of G.S. 75-1.1, the court may impose civil penalties of up to twenty-five thousand dollars ($25,000) for each violation involving North Carolina purchasers or prospective purchasers who are 65 years of age or older.

(c) The remedies and penalties available under this section shall be supplemental to others available under the law, both civil and criminal.

(d) Compliance with this Article does not satisfy or substitute for any other requirements for license, registration, or conduct imposed by law.

(e) In any civil proceeding alleging a violation of this Article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this Article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it."

Section 2. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.15. Telephone sales recovery services.**

(a) Except as provided in subsection (c) of this section, it shall be unlawful for any person or firm to solicit or require payment of money or other consideration in exchange for recovering or attempting to recover:

(1) Money or other valuable consideration previously tendered to a telephonic seller, as defined in G.S. 66-251; or

(2) Prizes, awards, or other things of value that the telephonic seller represented would be delivered.

(b) A violation of this section shall be punishable as a Class 1 misdemeanor. Any violation involving actual collection of money or other consideration from a customer shall be punishable as a Class H felony.

(c) This section does not apply to attorneys licensed to practice law in this State, to persons licensed by the North Carolina Private Protective Services Board, or to any collection agent properly holding a permit issued by the Department of Insurance to do business in this State."

Section 3. Section 2 of this act becomes effective January 1, 1998, and applies to offenses committed on or after that date. The remaining sections of this act become effective October 1, 1997, and apply to violations occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 253
Proposed Committee Substitute S253-PCS8626

Short Title: Telephone Consumer Protection/AB. (Public)

Sponsors:

Referred to:

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE REGISTRATION OF TELEPHONIC SELLERS IN NORTH CAROLINA, AND TO MAKE THE OFFERING OF TELEPHONE SALES RECOVERY SERVICES A CRIMINAL OFFENSE.

The General Assembly of North Carolina enacts:

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

"ARTICLE 33.

"Telephonic Seller Registration and Bond Requirement.

"**§ 66-260. Definitions.**

As used in this Article, unless the context requires otherwise:

(1) 'Gift or prize' means any premium, bonus, award, or any other thing of value.

(2) 'Item' means any good or any service. 'Item' includes coupon books, vouchers, or certificates that are to be used with businesses other than the seller's business.

(3) 'Owner' means a person who owns or controls ten percent (10%) or more of the equity of, or otherwise has a claim to ten percent (10%) or more of the net income of, a telephonic seller.

(4) 'Person' includes any individual, firm, association, corporation, partnership, joint venture, or any other business entity.

(5) 'Principal' means an owner, an executive officer of a corporation, a general partner of a partnership, a sole proprietor of a sole

proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(6) 'Purchaser' or 'prospective purchaser' means a person who is solicited to become obligated to a telephonic seller or to make any donation or gift to any person represented by the telephonic seller.

(7) 'Room operator' means any principal, employee, or agent responsible for the operational management and supervision of facilities from which telephonic sales calls are made or received.

(8) 'Salesperson' means any individual employed, appointed, or authorized by a telephonic seller, whether referred to by the telephonic seller as an agency, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the telephonic seller.

(9) 'Secretary' means the Office of the Secretary of State.

(10) 'Telephone solicitation' or 'attempted telephone solicitation' means any telephonic communication designed to persuade any person to purchase goods or services, to enter a contest, or to contribute to a charity or a person represented to be a charity, regardless of whether the telephone call initiating the solicitation is placed by the (i) telephonic seller or (ii) a person responding to any unsolicited notice or notices sent or provided by or on behalf of the seller, which notice or notices represents to the recipient that he or she has won a gift or prize, that the recipient may obtain or qualify for credit by contacting the seller, or that the seller has buyers interested in purchasing the recipient's property.

(11) 'Telephonic seller' or 'seller' means a person who, directly or through salespersons, causes a telephone solicitation or attempted telephone solicitation to occur. 'Telephonic seller' and 'seller' does not include any of the following:

a. A securities 'dealer' within the meaning of G.S. 78A-2(2) or a person excluded from the definition of 'dealer' by that provision; a 'salesman' within the meaning of G.S. 78A-2(9); an 'investment adviser' within the meaning of G.S. 78C-2(1) or a person excluded from the definition of 'investment adviser' by that provision; or an 'investment adviser representative' within the meaning of G.S. 78C-2(3); provided that such persons shall be excluded from the terms 'telephonic seller' and 'seller' only with respect to activities regulated by Chapters 78A and 78C.

b. Any person conducting sales or solicitations on behalf of a licensee of the Federal Communications Commission or holder of a franchise or certificate of public convenience and necessity from the North Carolina Utilities Commission.

c. Any insurance agent or broker who is properly licensed by the Department of Insurance and who is soliciting within the scope of the agent's or broker's license or any employee or independent contractor of an insurance company licensed by the Department of Insurance conducting sales or solicitations on behalf of that company.

d. Any federally chartered bank or savings institution or any bank or savings institution properly licensed by the State or subject to federal regulating authorities.

e. Any organization that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, the United States, or a state; any 'charitable solicitor' properly licensed under Article 2 of Chapter 131F of the General Statutes, or any person exempt from Chapter 131F of the General Statutes under G.S. 131F-3.

f. A person who periodically issues and delivers catalogs to potential purchasers and the catalog:

1. Includes a written description or illustration and the sales price of each item offered for sale;
2. Includes at least 24 full pages of written material or illustrations;
3. Is distributed in more than one state; and
4. Has an annual circulation of not less than 250,000 customers.

g. A person engaging in a commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of a like nature.

h. A person primarily soliciting the sale of a newspaper of general circulation, a publisher of a magazine or other periodical of general circulation, or an agent of such a publisher acting pursuant to a written agency agreement.

i. A person soliciting the sale of services provided by a cable television system operating under the authority of a local franchise.

j. Any passenger airline licensed by the Federal Aviation Administration.

k. Any person holding a real estate broker's or Sales agent's license under Chapter 93A of the General Statutes and who is soliciting within the scope of the broker's or agent's license.

l. Any person soliciting a transaction regulated by the Commodities Futures Trading Commission, provided the person is registered or temporarily licensed by the Commodities Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. § 1, et seq.

m. Any person soliciting a purchase from a business, provided the person soliciting makes reasonable efforts to ensure that the person solicited has actual authority to bind the business to a purchase agreement.

n. A foreign corporation, limited liability company, or limited partnership that has obtained and maintained a certificate of authority to transact business or conduct affairs in this State pursuant to Chapter 55, 55A, or 57C or Article 5 of Chapter 59 of the General Statutes and that only transacts business or conducts affairs in this State using the name set forth in the certificate of authority.

o. An issuer or a subsidiary of an issuer that has a class of securities which is subject to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781) and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.

p. A person soliciting the sale of food, seeds, or plants when a sale does not involve an amount in excess of one hundred dollars ($100.00) directed to a single address.

q. A person soliciting:

1. Without intent to complete or obtain provisional acceptance of a sale during the telephone solicitation;

2. Who does not make the major sales presentation during the telephone solicitation but arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser;

3. Who does not cause an individual to go to the prospective purchaser to collect payment for the purchase or to deliver any item purchased directly following the telephone solicitation; or

4. Who offers to send the purchaser descriptive literature and does not require payment prior to the purchaser's review of the descriptive literature.

r. A person soliciting the purchase of contracts for the maintenance or repair of items previously purchased from the person making the solicitation or on whose behalf the solicitation is made.

s. A book, video, recording or multimedia club or contractual plan or arrangement:

1. Under which the seller provides the consumer with a form with which the consumer can instruct the seller not to ship the offered merchandise.

2. Which is regulated by the Federal Trade Commission trade regulation concerning 'use of negative option plans by sellers in commerce'.

3. Which provides for the sale of books, recordings, multimedia products or goods, or videos which are not covered under paragraphs 1. or 2. of this subsubdivision, including continuity plans, subscription arrangements, standing order arrangements, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

t. A person who for at least two years has been operating under the same name as that used in connection with its telemarketing operations and retail establishment in North Carolina where consumer goods are displayed and offered for sale on a continuing basis if a majority of the person's business involves the buyers obtaining services or products at the person's retail establishment.

u. A person:

1. Who provides telephone solicitation services under contract to sellers;

2. Who has been operating continuously for at least three years under the same business name; and

3. For whom at least seventy-five percent (75%) of the person's contracts are performed on behalf of other persons exempt under this section.

v. A person soliciting political contributions in accordance with Article 22A of Chapter 163 of the General Statutes.

w. The seller of a 'business opportunity' as defined in G.S. 66-94, while engaged in activities subject to regulation under Article 19 of Chapter 66 of the General Statutes, provided

that such seller has complied with the provisions of G.S. 66-97.

x. A 'loan broker' as defined in G.S. 66-106, while engaged in activities subject to regulation under Article 20 of Chapter 66 of the General Statutes, provided that such loan broker has complied with the provisions of G.S. 66-109.

y. A 'membership camping operator' as defined in G.S. 66-232(10) or a 'salesperson' as defined in G.S. 66-232(16), while engaged in activities subject to regulation under Article 31 of Chapter 66 of the General Statutes, provided that such persons have complied with the provisions of G.S. 66-234 and G.S. 66-237, as applicable.

"§ 66-261. Registration of telephonic sellers.

(a) Not less than 10 days before commencing telephone solicitations in this State, a telephonic seller shall register with the Secretary by filing the information required in G.S. 66-262 and paying a filing fee of one hundred dollars ($100.00). A telephonic seller is doing business in this State if it solicits or attempts to solicit prospective purchasers from locations in this State or solicits or attempts to solicit prospective purchasers who are located in this State.

(b) The information required in G.S. 66-262 shall be submitted on a form provided by the Secretary and shall contain the notarized signatures of each principal of the telephonic seller.

(c) Registration of a telephonic seller shall be valid for one year from the effective date thereof and may be annually renewed by making the filing required in G.S. 66-262 and paying the filing fee of one hundred dollars ($100.00). Registration shall not be deemed effective unless all required information is provided and any deficiencies or errors noted by the Secretary have been corrected to the satisfaction of the Secretary.

(d) Whenever, prior to expiration of a seller's annual registration, there is a change in the information required by G.S. 66-262, the seller shall, within 10 days after the change, file an addendum with the Secretary updating the information.

"§ 66-262. Filing information.

(a) Each filing submitted to the Secretary shall contain all of the following information:

(1) The name or names, including any assumed names, under which the telephonic seller is doing or intends to do business in this State.

(2) The telephonic seller's business form and place of organization and, if the seller is a corporation, copies of its articles of incorporation and bylaws and amendments thereto, or if a partnership, a copy of the partnership agreement.

(3) Complete street address of the telephonic seller's principal place of business.

(4) The complete street address of each location from which telephone solicitations are placed by the telephonic seller.

(5) A listing of all telephone numbers to be used by the telephonic seller, including area codes, and the complete street address of the business premises served by each number.

(6) The name and title of each principal.

(7) The complete street address of the residence, the date of birth, and the social security number of each principal.

(8) The true name, street address, date of birth, and the social security number of each room operator, together with the room operator's full employment history during the preceding two years.

(9) The name and address of all banks or savings institutions where the telephonic seller maintains deposit accounts.

(10) The name and address of each long-distance telephone carrier used by the telephonic seller.

(11) A summary of each civil or criminal proceeding brought against the telephonic seller, any of its principals, or any of its room operators during the preceding five years by federal, State, or local officials relating to telephonic sales practices of each. The summary shall include the date each action was commenced, the criminal or civil charges alleged, the case caption, the court file number, the court venue, and the disposition of the action. For purposes of this section, a 'civil proceeding includes' means assurances of voluntary compliance, assurances of discontinuance, consent judgments, and similar agreements executed with federal, State, or local officials.

(b) For purposes of this section, 'street address' does not include a private mail service address.

"**§ 66-263. Bond requirement; prizes and gifts.**

(a) At least 10 days before the commencement of any promotion offering any gift or prize with an actual or represented market value of five hundred dollars ($500.00) or more, the telephonic seller shall notify the Secretary in writing of the details of the promotion, fully describing the nature and number of all gifts or prizes and their current market value, the seller's rules and regulations governing the promotion, and the date the gifts or prizes are to be awarded. All gifts or prizes offered shall be awarded. Concurrent with notifying the Secretary under this subsection, the telephonic seller shall post a bond with the Secretary for the market value or the represented value, whichever is greater, of all gifts or prizes represented as available under the promotion. The bond must be issued by a surety company authorized to do business in this State. The bond shall be in favor of the State of North Carolina for the benefit of any person entitled to receive a gift or prize under the promotion who did not receive it within 30 days of the specified date of award. The amount recoverable by any person under the bond shall not exceed the market value, the represented value of the gift or prize, or the amount of any consideration or contribution paid by that person in response to the telephone solicitation, whichever is greatest.

(b) Within 45 days after the specified date of the award of the gift or prize, the seller shall provide, in writing, to the Secretary, proof that the gifts or prizes were awarded. The writing shall include the name, address, and telephone number of all persons receiving awards or prizes. The bond shall be maintained until the Secretary receives reliable proof that the gifts or prizes have been delivered to the intended recipients.

(c) The Attorney General, on behalf of any injured purchaser, or any purchaser who is injured by the bankruptcy of the telephonic seller or its breach of any agreement entered into in its capacity as a telephonic seller, may initiate a civil action to recover against the bond.

"**§ 66-264. Calls made to minors.**

A telephonic seller must inquire as to whether the prospective purchaser it is contacting is under 18 years of age. If the prospective purchaser is under 18 years of age, the telephonic seller must discontinue the call immediately.

"**§ 66-265. Offers of gifts or prizes.**

(a) It shall be unlawful for any telephonic seller to make a telephone solicitation or attempted telephone solicitation involving any gift or prize when the solicitation or attempted solicitation:

(1) Requests or directs the consumer to further the transaction by calling a 900 number or a pay per call number.

(2) Requests or directs the consumer to send any payment or make a donation in order to collect the gift or prize.

(3) Does not comply fully with G.S. 75-30, 75-32, 75-33, or 75-34.

(b) Notwithstanding subsection (a) of this section, a telephonic seller may offer a gift or prize in connection with the bona fide sale of a product or service.

"**§ 66-266. Penalties.**

(a) Any violation of this Article shall constitute an unfair and deceptive trade practice in violation of G.S. 75-1.1.

(b) In an action by the Attorney General against a telephonic seller for violation of this Article, or for any other act or practice by a telephonic seller constituting a violation of G.S. 75-1.1, the court may impose civil penalties of up to twenty-five thousand dollars ($25,000) for each violation involving North Carolina purchasers or prospective purchasers who are 65 years of age or older.

(c) The remedies and penalties available under this section shall be supplemental to others available under the law, both civil and criminal.

(d) Compliance with this Article does not satisfy or substitute for any other requirements for license, registration, or conduct imposed by law.

(e) In any civil proceeding alleging a violation of this Article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this Article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it."

Section 2. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.15. Telephone sales recovery services.**

(a) Except as provided in subsection (c) of this section, it shall be unlawful for any person or firm to solicit or require payment of money or other consideration in exchange for recovering or attempting to recover:

(1) Money or other valuable consideration previously tendered to a telephonic seller, as defined in G.S. 66-260; or

(2) Prizes, awards, or other things of value that the telephonic seller represented would be delivered.

(b) A violation of this section shall be punishable as a Class 1 misdemeanor. Any violation involving actual collection of money or other consideration from a customer shall be punishable as a Class H felony.

(c) This section does not apply to attorneys licensed to practice law in this State, to persons licensed by the North Carolina Private Protective Services Board, or to any collection agent properly holding a permit issued by the Department of Insurance to do business in this State."

Section 3. Section 2 of this act becomes effective January 1, 1998, and applies to offenses committed on or after that date. The remaining sections of this act become effective October 1, 1997, and apply to violations occurring on or after that date.

North Carolina General Assembly
Legislative Services Agency

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March 27, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 253
Telephone Consumer Protection

Senate Bill 253 requires telephonic sellers to register with the Secretary of State. A telephonic seller is a person who solicits persons by telephone to purchase goods or services, enter contests, or contribute to charities, but does not include nonprofit charities, licensed charitable solicitors, insurance agents, banks, realtors, securities sellers, utilities, airlines, and certain other enumerated persons, nor does it include certain types of transactions, such as isolated commercial solicitations and solicitations of persons who have previously initiated purchases from the solicitor (see §66-251(11). The registration process includes the filing of required information and payment of a $100 fee. Registration may be renewed annually upon payment of a $100 fee.

In addition to registering, a telephonic seller engaged in a promotion involving gifts or prizes of $500 or more must notify the Secretary of State of the details of the promotion and file a bond covering the value of the gifts and prizes offered. All gifts and prizes offered must be awarded. It is unlawful to request or demand payment or to require the calling of a pay-per-call number as a condition of claiming a gift. In addition, it is unlawful to solicit anyone under 18 years of age. A person who is entitled to a gift or prize and does not receive it within 30 days may file a claim under the posted bond for the market or represented value of the gift or prize or the amount of consideration paid, whichever is greatest.

A violation is an unfair and deceptive trade practice under the Unfair and Deceptive Trade Practices Law. If the violation involves a victim age 65 or older, the court may impose a civil penalty of up to $25,000.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 2 of the bill prohibits telephone sales recovery services. These are services provided by persons who, for a fee or other consideration, offer to recover money paid to a telephonic seller or prizes or gifts offered by the telephonic seller. Attorneys, persons licensed by the Private Protective Services Board, and licensed collection agents are exempt from this prohibition. A violation of this law is a Class H felony if a fee or other consideration is collected for the services; otherwise, the violation is a Class 1 misdemeanor.

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VIA FACSIMILE

March 26, 1997

Senator R. C. Soles, Jr.
Chairman, Committee on Commerce
State Legislative Building
Raleigh, NC 27601-2808

Re: Proposed Amendments to North Carolina S.B. 253

Dear Chairman Soles:

I am writing on behalf of Thomas Cook Currency Services, Inc. ("Thomas Cook") to comment on S.B. 253, the North Carolina Telephonic Seller Registration and Bond Requirement Act, which was introduced by Senator Winner and is pending before the Committee on Commerce. Thomas Cook is already licensed and bonded in North Carolina pursuant to the Sale of Checks Act. Set forth below, for your consideration, is a proposed amendment to the bill that is designed to prevent unnecessary and duplicative regulation of Thomas Cook in the State while, at the same time, ensuring that the company's business practices are adequately regulated.

Thomas Cook Services

Thomas Cook is a premier vendor of travel-related financial services throughout the world, including the United States. With more than 1,300 wholly-owned sales offices worldwide, the 150 year-old company has a presence in every principal city in this country.

Financial services offered by Thomas Cook include foreign currency drafts, money orders and travelers checks, among others. In addition, Thomas Cook recently acquired Deak International Group's North American Retail Operations, which retails gold and silver bars in the United States. Thomas Cook currently markets these financial services by "word-of-mouth", newspaper advertising and direct mail advertising. While all these products and services are now purchased primarily through customer-initiated transactions at Thomas Cook retail locations, the company is developing plans to initiate focused,

targeted telemarketing efforts for sale of foreign currency, money orders, travelers checks and drafts, as well as gold and silver bouillon sales.

S.B. 253 Would Require Duplicative Regulation of Thomas Cook in the State

S.B. 253 requires telephone solicitors to register with the state and post a surety bond. Similarly, the North Carolina Sale of Checks Act, N.C. Gen. Stat. §§53-192 to 53-208, requires companies, such as Thomas Cook, engaged in the sale of travelers checks, money orders, etc., to obtain a license from the North Carolina Commissioner of Banks and post a surety bond. Thomas Cook is similarly regulated under laws of many other states where the Company does business. These statutes, like the North Carolina Sale of Checks Act, provide for the safety and soundness of Thomas Cook's business operations and assure consumer protection, and obviate the need for further regulation under the Telephonic Seller Registration and Bond Requirement Act.

Proposed Amendment

Given the fact that the company is already licensed and regulated by the State, we propose that S.B. 253 be amended by adding the following exemption at Article 33, § 66.260 (11) (W):

> Any person or entity licensed pursuant to the North Carolina Sale of Checks Act, N.C. Gen.Stat. §§53-192 to 53-208.

In conclusion, there is no need for further regulation of Thomas Cook's telephone sales operations because North Carolina law already thoroughly regulates Thomas Cook's activities ensuring the safety and soundness of the company's business practices in protecting consumers in North Carolina. I appreciate your consideration of this proposal.

Sincerely,

Rosemary H. McEnery

cc: Senator Lesile Winner

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 438

Short Title: Securities/Investment Advisers Enforcement. (Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ENFORCEMENT PROCEDURES RELATED TO THE REGISTRATION OF SECURITIES AND TO INVESTMENT ADVISERS AND TO ESTABLISH THE CONFIDENTIALITY OF RECORDS RELATING TO CRIMINAL INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 78A-39(a)(2) reads as rewritten:

"(2) That the applicant or registrant or, in the case of a dealer, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer:

a. Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

b. Has willfully violated or willfully failed to comply with any provision of this Chapter or a predecessor law or any rule or order under this Chapter or a predecessor law or any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, or the Commodity Exchange Act; or

c. Has been convicted, within the past 10 years, of any misdemeanor involving a security or any aspect of the securities business, or any felony; or

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or

e. Is the subject of an order of the Administrator denying, suspending, or revoking registration as a dealer or salesman; or

f. Is the subject of an order entered within the past five years by the securities administrator of any state or by the Securities and Exchange Commission denying or revoking registration as a dealer or salesman, or the substantial equivalent of those terms as defined in this Chapter, or is the subject of ~~an~~ a final order ~~of the Securities and Exchange Commission~~ suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but (i) the Administrator may not institute a revocation or suspension proceeding under subdivision (2)f of subsection (a) more than one year from the date of the order relied on, and (ii) ~~he~~ the Administrator may not enter an order under subdivision (2)f of subsection (a) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section; or

g. Has engaged in dishonest or unethical practices in the securities business; or

h. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the Administrator may not enter an order against a dealer under this paragraph without a finding of insolvency as to the dealer; or

i. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b)."

Section 2. G.S. 78A-39(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that within 15 days after the

receipt of a written request the matter will be set down for hearing. If no ~~hearing is requested~~ request for a hearing or other responsive pleading or submission is received by the Administrator within 30 days of service of notice upon the applicant or registrant and ~~none~~ no hearing is ordered by the Administrator, the order ~~will~~ shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

Section 3. G.S. 78A-46(a)(1) reads as rewritten:

"(1) May make ~~such public or private investigations~~ any investigation within or outside of this State as ~~he~~ the Administrator deems necessary to determine whether any person has violated or is about to violate any provision of this Chapter or any rule or order hereunder, or to aid in the enforcement of this Chapter or in the prescribing of rules and forms hereunder,".

Section 4. G.S. 78A-47(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78A-47(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be set down for hearing to determine whether or not the order shall become permanent and final. If no ~~hearing is requested~~ request for a hearing or other responsive pleading or submission is received by the Administrator within 30 days of service of notice upon the person subject to the order and ~~none~~ no hearing is ordered by the Administrator, the order shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

Section 5. G.S. 78A-50 reads as rewritten:

"§ 78A-50. Administrative files and opinions.

(a) A document is filed when it is received by the Administrator.

(b) The Administrator shall keep a register of all applications for registration and registration statements which are or have been effective under this Chapter and all denial, suspension, or revocation orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the Administrator prescribes.

(c1) The files and records of the Administrator relating to criminal investigations and enforcement proceedings undertaken pursuant to this Chapter are subject to the provisions of G.S. 132-1.4.

(c2) The files and records of the Administrator relating to noncriminal investigations and enforcement proceedings undertaken pursuant to this Chapter shall not be subject to inspection and examination pursuant to G.S. 132-6 until the investigations and proceedings are completed and cease to be active.

(c3) Any information obtained by the Administrator from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation or proceeding undertaken pursuant to this Chapter shall be confidential and exempt from G.S 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

(d) Upon request and at such reasonable charges as ~~he~~ the administrator prescribes, the Administrator shall furnish to any person photostatic or other copies (certified under ~~his~~ the seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this Chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The Administrator ~~in his discretion~~ may honor requests from interested persons for interpretative opinions. When an exemption is claimed in writing, cites the section relied upon, and is considered eligible upon the showing made, a 'no action' letter will be furnished upon request and upon the payment of a fee of one hundred fifty dollars ($150.00)."

Section 6. G.S. 78C-2 is amended by adding a new subdivision to read:

"(5) 'Person' means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government."

Section 7. G.S. 78C-19(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an investment adviser representative, that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If no ~~hearing is requested~~ request for hearing or other responsive pleading or submission is received by the Administrator within 30 days of service of notice upon the applicant or registrant and ~~none~~ no hearing is ordered by the Administrator, the order ~~will~~ shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the

Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

Section 8. G.S. 78C-27(a)(1) reads as rewritten:

"(1) May make ~~such public or private investigations~~ any investigation within or outside of this State as ~~he~~ the Administrator deems necessary to determine whether any person has violated or is about to violate any provision of this Chapter or any rule or order hereunder, or to aid in the enforcement of this Chapter or in the prescribing of rules and forms hereunder;".

Section 9. G.S. 78C-28(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78C-28(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be set down for hearing to determine whether or not the order shall become permanent and final. If no ~~hearing is requested~~ request for a hearing or other responsive pleading or submission is received by the Administrator within 30 days of service of notice upon the person subject to the order and ~~none~~ no hearing is ordered by the Administrator, the order shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

Section 10. G.S. 78C-31 reads as rewritten:

"**§ 78C-31. Administrative files and opinions.**

(a) A document is filed when it is received by the Administrator.

(b) The Administrator shall keep a register of all applications for registration which are or have been effective under this Chapter and all denial, suspension, or revocation orders or similar orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with any registration, application, or report may be made available to the public under such rules as the Administrator prescribes.

(c1) The files and records of the Administrator relating to criminal investigations and enforcement proceedings undertaken pursuant to this Chapter are subject to the provisions of G.S. 132-1.4.

(c2) The files and records of the Administrator relating to noncriminal investigations and enforcement proceedings undertaken pursuant to this Chapter shall

not be subject to inspection and examination pursuant to G.S. 132-6 until the investigations and proceedings are completed and cease to be active.

(c3) Any information obtained by the Administrator from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation or proceeding undertaken pursuant to this Chapter shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

(d) Upon request and at such reasonable charges as ~~he~~ the Administrator prescribes, the Administrator shall furnish to any person photostatic or other copies (certified under ~~his~~ the seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this Chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The Administrator ~~in his discretion~~ may honor requests from interested persons for interpretative opinions upon the payment of a fee of one hundred fifty dollars ($150.00)."

Section 11. This act becomes effective October 1, 1997, and applies to administrative proceedings commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 438
Proposed Committee Substitute S438-PCS1701

Short Title: Securities/Investment Advisers Enforcement. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ENFORCEMENT PROCEDURES RELATED TO THE REGISTRATION OF SECURITIES AND TO INVESTMENT ADVISERS AND TO ESTABLISH THE CONFIDENTIALITY OF RECORDS RELATING TO CRIMINAL INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 78A-39(a)(2) reads as rewritten:

"(2) That the applicant or registrant or, in the case of a dealer, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer:

a. Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

b. Has willfully violated or willfully failed to comply with any provision of this Chapter or a predecessor law or any rule or order under this Chapter or a predecessor law or any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, or the Commodity Exchange Act; or

c. Has been convicted, within the past 10 years, of any misdemeanor involving a security or any aspect of the securities business, or any felony; or

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or

e. Is the subject of an order of the Administrator denying, suspending, or revoking registration as a dealer or salesman; or

f. Is the subject of an order entered within the past five years by the securities administrator of any state or by the Securities and Exchange Commission denying or revoking registration as a dealer or salesman, or the substantial equivalent of those terms as defined in this Chapter, or is the subject of ~~an~~ a final order ~~of the Securities and Exchange Commission~~ suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but (i) the Administrator may not institute a revocation or suspension proceeding under subdivision (2)f of subsection (a) more than one year from the date of the order relied on, and (ii) ~~he~~ the Administrator may not enter an order under subdivision (2)f of subsection (a) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section; or

g. Has engaged in dishonest or unethical practices in the securities business; or

h. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the Administrator may not enter an order against a dealer under this paragraph without a finding of insolvency as to the dealer; or

i. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b)."

Section 2. G.S. 78A-39(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that within 15 days after the

receipt of a written request the matter will be set down for hearing. If no ~~hearing is requested~~ request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the applicant or registrant and ~~none~~ no hearing is ordered by the Administrator, the order ~~will~~ shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

Section 3. G.S. 78A-46(a)(1) reads as rewritten:

"(1) May make ~~such public or private investigations~~ any investigation within or outside of this State as ~~he~~ the Administrator deems necessary to determine whether any person has violated or is about to violate any provision of this Chapter or any rule or order hereunder, or to aid in the enforcement of this Chapter or in the prescribing of rules and forms hereunder,".

Section 4. G.S. 78A-47(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78A-47(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be set down for hearing to determine whether or not the order shall become permanent and final. If no ~~hearing is requested~~ request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the person subject to the order and ~~none~~ no hearing is ordered by the Administrator, the order shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

Section 5. G.S. 78A-50 reads as rewritten:

"§ 78A-50. Administrative files and opinions.

(a) A document is filed when it is received by the Administrator.

(b) The Administrator shall keep a register of all applications for registration and registration statements which are or have been effective under this Chapter and all denial, suspension, or revocation orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the Administrator prescribes.

(c1) The files and records of the Administrator relating to criminal investigations and enforcement proceedings undertaken pursuant to this Chapter are subject to the provisions of G.S. 132-1.4.

(c2) The files and records of the Administrator relating to noncriminal investigations and enforcement proceedings undertaken pursuant to this Chapter shall not be subject to inspection and examination pursuant to G.S. 132-6 until the investigations and proceedings are completed and cease to be active.

(c3) Any information obtained by the Administrator from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation or proceeding undertaken pursuant to this Chapter shall be confidential and exempt from G.S 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

(d) Upon request and at such reasonable charges as ~~he~~ the administrator prescribes, the Administrator shall furnish to any person photostatic or other copies (certified under ~~his~~ the seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this Chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The Administrator ~~in his discretion~~ may honor requests from interested persons for interpretative opinions. When an exemption is claimed in writing, cites the section relied upon, and is considered eligible upon the showing made, a 'no action' letter will be furnished upon request and upon the payment of a fee of one hundred fifty dollars ($150.00)."

Section 6. G.S. 78C-2 is amended by adding a new subdivision to read:

"(5) 'Person' means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government."

Section 7. G.S. 78C-19(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an investment adviser representative, that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If no ~~hearing is requested~~ request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the applicant or registrant and ~~none~~ no hearing is ordered by the Administrator, the order ~~will~~ shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is

requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

Section 8. G.S. 78C-27(a)(1) reads as rewritten:

"(1) May make ~~such public or private investigations~~ any investigation within or outside of this State as ~~he~~ the Administrator deems necessary to determine whether any person has violated or is about to violate any provision of this Chapter or any rule or order hereunder, or to aid in the enforcement of this Chapter or in the prescribing of rules and forms hereunder;".

Section 9. G.S. 78C-28(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78C-28(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be set down for hearing to determine whether or not the order shall become permanent and final. If no ~~hearing is requested~~ request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the person subject to the order and ~~none~~ no hearing is ordered by the Administrator, the order shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

Section 10. G.S. 78C-31 reads as rewritten:

"**§ 78C-31. Administrative files and opinions.**

(a) A document is filed when it is received by the Administrator.

(b) The Administrator shall keep a register of all applications for registration which are or have been effective under this Chapter and all denial, suspension, or revocation orders or similar orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with any registration, application, or report may be made available to the public under such rules as the Administrator prescribes.

(c1) The files and records of the Administrator relating to criminal investigations and enforcement proceedings undertaken pursuant to this Chapter are subject to the provisions of G.S. 132-1.4.

(c2) The files and records of the Administrator relating to noncriminal investigations and enforcement proceedings undertaken pursuant to this Chapter shall not be subject to inspection and examination pursuant to G.S. 132-6 until the investigations and proceedings are completed and cease to be active.

(c3) Any information obtained by the Administrator from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation or proceeding undertaken pursuant to this Chapter shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

(d) Upon request and at such reasonable charges as ~~he~~ the Administrator prescribes, the Administrator shall furnish to any person photostatic or other copies (certified under ~~his~~ the seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this Chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The Administrator ~~in his discretion~~ may honor requests from interested persons for interpretative opinions upon the payment of a fee of one hundred fifty dollars ($150.00)."

Section 11. This act becomes effective October 1, 1997, and applies to administrative proceedings commenced on or after that date.

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April 8, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 438 - SECURITIES/INVESTMENT ADVISERS ENFORCEMENT** - Senator Reeves

The Proposed Committee Substitute for Senate Bill 438 would amend the NC Securities Act and the Investment Advisors Act by clarifying when a hearing on an order issued by the Secretary of State may be requested, and making clear that records of criminal investigations conducted by the Secretary under these acts are not public records as any other criminal investigation, and civil investigation records are not public records until the investigations are finished.

Sections 1 through 5 of the bill amend parts of the **NC Securities Act**. Section 1 allows the Secretary to deny, suspend, or revoke the registration of a securities dealer when a final order suspending or expelling the dealer from the national securities organizations is entered. Sections 2 and 4 will make the Secretary's order final unless a request for hearing, other responsive pleading, or submission is made within 30 business days of receipt of the notice of the order by the dealer. Section 5 makes it clear that the provisions of G.S. 132-1.4 (a copy is attached) which exempts criminal investigative records from the public records law applies to investigations under this Act by the Secretary. This section also provides that noncriminal investigation records shall not be subject to public access until the matter is completed and ceases to be active. Additionally, this section makes clear that confidential information obtained from other law enforcement, administrative, or regulatory agencies retains its confidentiality with the Secretary.

Sections 6 through 10 would make similar changes to parts of the **Investment Advisers Act**. Section 6 adds a definition of person to the Act. Sections 7 and 9 will make the Secretary's order denying or suspending the investment advisers registration final unless a request for hearing, other responsive pleading, or submission is made within 30 business days of receipt of the notice of the order by the advisor.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 10 provides the same exemptions from the public records law for investigations under the Investment Advisers Act as does Section 5 of the bill.

Actions by the Secretary of State under many of these sections are civil administrative proceedings, normally seeking to stop actions in violation of the law. While certain violations of both the NC Securities Act and the Investment Adviser Act are punished as Class I felonies, the administrative actions, primarily as cease and desist orders, are often used in situations where violations are initiated out of state and where obtaining criminal jurisdiction would be more difficult.

This bill would become effective October 1, 1997, and would apply to proceedings commenced on or after that date.

§ 132-1.4. Criminal investigations; intelligence information records.

(a) Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information compiled by public law enforcement agencies are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

(b) As used in this section:

(1) "Records of criminal investigations" means all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law, including information derived from witnesses, laboratory tests, surveillance, investigators, confidential informants, photographs, and measurements.

(2) "Records of criminal intelligence information" means records or information that pertain to a person or group of persons that is compiled by a public law enforcement agency in an effort to anticipate, prevent, or monitor possible violations of the law.

(3) "Public law enforcement agency" means a municipal police department, a county police department, a sheriff's department, a company police agency commissioned by the Attorney General pursuant to G.S. 74E-1, **et seq.**, and any State or local agency, force, department, or unit responsible for investigating, preventing, or solving violations of the law.

(4) "Violations of the law" means crimes and offenses that are prosecutable in the criminal courts in this State or the United States and infractions as defined in G.S. 14-3.1.

(5) "Complaining witness" means an alleged victim or other person who reports a violation or apparent violation of the law to a public law enforcement agency.

(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by law, the following information shall be public records within the meaning of G.S. 132-1.

(1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.

(2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.

(3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.

(4) The contents of "911" and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness.

(5) The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways.

(6) The name, sex, age, and address of a complaining witness.

(d) A public law enforcement agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or

criminal intelligence operation. Information temporarily withheld under this subsection shall be made available for release to the public in accordance with G.S. 132-6 as soon as the circumstances that justify withholding it cease to exist. Any person denied access to information withheld under this subsection may apply to a court of competent jurisdiction for an order compelling disclosure of the information. In such action, the court shall balance the interests of the public in disclosure against the interests of the law enforcement agency and the alleged victim in withholding the information. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(e) If a public law enforcement agency believes that release of information that is a public record under subdivisions (c)(1) through (c)(5) of this section will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such action the law enforcement agency shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Nothing in this section shall be construed as authorizing any public law enforcement agency to prohibit or prevent another public agency having custody of a public record from permitting the inspection, examination, or copying of such public record in compliance with G.S. 132-6. The use of a public record in connection with a criminal investigation or the gathering of criminal intelligence shall not affect its status as a public record.

(g) Disclosure of records of criminal investigations and criminal intelligence information that have been transmitted to a district attorney or other attorney authorized to prosecute a violation of law shall be governed by this section and Chapter 15A of the General Statutes.

(h) Nothing in this section shall be construed as requiring law enforcement agencies to disclose the following:

(1) Information that would not be required to be disclosed under Chapter 15A of the General Statutes; or

(2) Information that is reasonably likely to identify a confidential informant.

(i) Law enforcement agencies shall not be required to maintain any tape recordings of "911" or other communications for more than 30 days from the time of the call, unless a court of competent jurisdiction orders a portion sealed.

(j) When information that is not a public record under the provisions of this section is deleted from a document, tape recording, or other record, the law enforcement agency shall make clear that a deletion has been made. Nothing in this subsection shall authorize the destruction of the original record.

(k) The following court records are public records and may be withheld only when sealed by court order: arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and nontestimonial identification orders.

(l) Records of investigations of alleged child abuse shall be governed by G.S. 7A-675. (1993, c. 461, s. 1.)

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April 8, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 439 - CONFORM SECURITIES AND INVESTMENT ADVISORS LAW TO FEDERAL LAW** - Senator Reeves

Senate Bill 439 amends the North Carolina Securities Act to conform North Carolina law with 1996 changes made in federal securities laws involving the registration of securities dealers and sellers, and investment advisers. This bill is a recommendation of the Secretary of State's office.

The National Securities Markets Improvement Act of 1996 preempts state regulation of certain "covered securities" with federal securities registration. Under this law the states retain investigative and enforcement authority with respect to securities fraud and deceit. The law also allows the states to require "notice" filings of the federal securities filings with the state and permits the states to continue to charge filing and registration fees for these securities. The new federal law also exempts from Securities Exchange Commission (SEC) registration investment advisors subject to state regulation unless they manage at least $25 million in assets and serve as advisers to certain federally registered investment companies. For those investment advisers subject to SEC registration the states still have the right to require "notice filings" and registration fees, and may also investigate fraud and deceit. The law also limits recordkeeping, capital, or bonding requirements to no more than those required in the state where the investment adviser has its principal place of business. The law exempts from state registration advisers who do not have a place of business in the state and who have fewer than 6 clients who were residents of the State for the preceding 12-month period.

Senate Bill 439 amends NC law to conform to those matters still within the control of the State, and to exempt those matters on which federal law preempts state law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Sections 1, 2 and 3 involve amendments to definitions to distinguish matters subject to state regulation and those subject to federal regulation. Section 3 amends effective October 1, 1999 the definition amended in Section 2, because federal law give the states three years to regulate securities otherwise exempt when the issuer fails file the required notice and pay the required state fees.

Section 6 spells out the notice filing registration requirements for securities that are exempt from state regulation, including the fees that the Secretary of State may charge. This section also includes the authority to require the securities issuer to consent to service of process in this State and to issue a stop order for an issuer who fails to comply with this section.

Sections 7 through 10 make conforming changes to other related statutes.

Sections 11 and 12 involve amendments to definitions of investment advisers to make clear which advisers are regulated by state law and which advisers are not. Section 12 amends effective October 1, 1999 the definition amended in Section 11, because federal law gives the states three years to regulate advisers otherwise exempt when the advisor fails to register and pay the required state fees.

Section 14 specifies that all investment advisers transacting business in the State must register unless they are exempt under federal law and those advisers exempt under federal law must still make a notice filing and pay the appropriate fees.

Sections 15, 16, and 17 make conforming changes to other related statutes.

The bill becomes effective October 1, 1997 except for Sections 3 and 12 which will amend sections 2 and 11 once the 3-year enforcement overlap period expires.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 439*

Short Title: Securities/Investment Advisers/AB. (Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND THE INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.

The General Assembly of North Carolina enacts:

I. Securities

Section 1. G.S. 78A-2(9) reads as rewritten:

"(9) 'Salesman' means any individual other than a dealer who represents a dealer in effecting or attempting to effect purchases or sales of securities. 'Salesman' does not include an individual who represents (i) an issuer in effecting transfers in securities described in sub-subdivision (2)d. of this section or in effecting transactions in a covered security as described in Section 18(b)(3) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(3)] and Section 18(b)(4)(D) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(4)(d)]; or (ii) a dealer in effecting transactions in this State limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o(h)(2)]. A partner, executive officer, or director of a dealer, or a person occupying a similar status or performing similar functions, is a salesman only if he otherwise comes within this definition."

Section 2. G.S. 78A-2 is amended by adding a new subdivision to read:

"(11a) 'Security covered under federal law' means any security that is a covered security under Section 18(b) of the Securities Act of

1933 [15 U.S.C. § 77r(b)] or rules or regulations adopted under that section. 'Security covered under federal law' does not include a security for which a fee required by this Article has not been paid and promptly remedied following written notification from the Administrator to the issuer of the nonpayment or underpayment of the fee."

Section 3. Effective October 10, 1999, G.S. 78A-2(11a), as enacted by Section 2 of this act, reads as rewritten:

"(11a) 'Security covered under federal law' means any security that is a covered security under Section 18(b) of the Securities Act of 1933 [15 U.S.C. §77r(b)] or rules or regulations adopted under that section. ~~'Security covered under federal law' does not include a security for which a fee required by this Article has not been paid and promptly remedied following written notification from the Administrator to the issuer of the nonpayment or underpayment of the fee.~~"

Section 4. The title to Article 4 of Chapter 78A reads as rewritten:

"ARTICLE 4.

"Registration and Notice Filing Procedures of Securities."

Section 5. G.S. 78A-24 reads as rewritten:

"**§ 78A-24. Registration requirement.**

It is unlawful for any person to offer or sell any security in this State unless (i) it is registered under this ~~Chapter or~~ Chapter, (ii) the security or transaction is exempted under G.S. 78A-16 or 78A-17 and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18, or (iii) it is a security covered under federal law."

Section 6. Article 4 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"**§ 78A-31. Securities covered under federal law.**

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

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

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

Securities Act of 1933, which shall be filed concurrently with the Administrator.

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

(b) With regard to any security that is covered under Section 18(b)(4)(D) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(4)(d)], the Administrator, by rule or order, may require the issuer to file a notice on SEC Form D [17 C.F.R. § 239.500] and a consent to service of process signed by the issuer no later than 15 days after the first sale of the security in this State. The Administrator may, by rule, establish a fee to recover costs for filing required by this section, not to exceed one hundred fifty dollars ($150.00).

(c) The Administrator, by rule or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a security covered under Section 18(b)(3) or (4) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(3) or (4)]. The Administrator may, by rule, establish a fee to recover costs for any filing required under this section, not to exceed one hundred fifty dollars ($150.00).

(d) The Administrator may issue a stop order suspending the offer and sale of a security covered under 18(b)(1) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(1)], if the Administrator finds that (i) the order is in the public interest, and (ii) there is a failure to comply with any condition established under this section.

(e) The Administrator, by rule or order, may waive any of the requirements set by this section."

Section 7. G.S. 78A-38 reads as rewritten:

"**§ 78A-38. Post-registration provisions.**

(a) Every registered dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o]. ~~All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.~~

(b) Every registered dealer shall file such financial reports as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o].

(c) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under G.S. 78A-36(b).

(d) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the

Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 8. G.S. 78A-49(d) reads as rewritten:

"(d) The Administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by G.S. 78A-16 or 78A-17 (except 78A-17(9), (17)) and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18 or is a security covered under federal law."

Section 9. G.S. 78A-63(a) reads as rewritten:

"(a) Sections 78A-8, 78A-10, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an offer to buy is made and accepted in this State."

Section 10. G.S. 78A-63(f) reads as rewritten:

"(f) Every applicant for registration under this Chapter and every issuer who proposes to offer a security in this State through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

II. Investment Advisers

Section 11. G.S. 78C-2 reads as rewritten:

"**§ 78C-2. Definitions.**

When used in this Chapter, the definitions of G.S. 78A-2 shall apply along with the following, unless the context otherwise requires:

(1) 'Investment adviser' means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. 'Investment adviser' also includes financial planners and other

persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. 'Investment adviser' does not include:

a. An investment adviser representative or a person excluded from the definition of investment adviser representative pursuant to G.S. 78C-2(3)c.;

b. A bank, savings institution, or trust company;

c. A lawyer, accountant, engineer, or teacher whose performance of any such services is solely incidental to the practice of his profession;

d. A dealer or its salesman whose performance of these services is solely incidental to the conduct of its business as a dealer and who receives no special compensation for them;

e. A publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

f. A person solely by virtue of such person's services to or on behalf of any 'business development company' as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 provided the business development company is not an 'investment company' by reason of Section 3(c)(1) of the Investment Company Act of 1940, as both acts were in effect on June 1, 1988;

g. A personal representative of a decedent's estate, guardian, conservator, receiver, attorney in fact, trustee in bankruptcy, trustee of a testamentary trust, or a trustee of an inter vivos trust, not otherwise engaged in providing investment advisory services, and the performance of these services is not a part of a plan or scheme to evade registration or the substantive requirements of this Chapter;

h. A licensed real estate agent or broker whose only compensation is a commission on real estate sold;

i. An individual or company primarily engaged in acting as a business broker whose only compensation is a commission on the sale of a business;

j. An individual who, as an employee, officer or director of, or general partner in, another person and in the course of

performance of his duties as such, provides investment advice to such other person, or to entities that are affiliates of such other person, or to employee benefit plans of such other person or its affiliated entities, or, with respect to such employee benefit plans, to employees of such other person or its affiliated entities;

k. Any person who is exempt from registration under the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this sub-subsection to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988;

l. An employee of a person described in subdivision b., e., f., g., h., or j. of G.S. 78C-2(1) acting on behalf of such person within the scope of his employment;

m. An investment adviser who is covered under federal law as defined in subdivision (4) of this section.

~~m.~~ n. Such other persons not within the intent of this subsection as the Administrator may by rule or order designate.

(2) 'Investment Advisers Act of 1940' means the federal statute of that name as amended before or after the effective date of this Chapter.

(3) 'Investment adviser representative' means any partner, officer, director (or a person occupying a similar status or performing similar functions) or other individual ~~employed by or associated with an investment adviser, except clerical personnel, who:~~ except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under this Chapter, or who has a place of business located in this State and is employed by or associated with an adviser excluded under the definition of 'investment adviser covered under federal law', and who:

a. Makes any recommendations or otherwise renders advice regarding securities directly to clients,

b. Manages accounts or portfolios of clients,

c. Determines which recommendations or advice regarding securities should be given; provided, however if there are more than five such persons employed by or associated with an investment adviser, who do not otherwise come within the meaning of G.S. 78C-2(3)a., b., d., or e., then only the direct supervisors of such persons are deemed to

be investment adviser representatives under G.S. 78C-2(3)c.,

d. Solicits, offers or negotiates for the sale of or sells investment advisory services, unless such person is a dealer or salesman registered under Chapter 78A of the General Statutes and the person would not be an investment adviser representative except for the performance of the activities described in G.S. 78C-2(3)d., or

e. Directly supervises investment adviser representatives as defined in G.S. 78C-2(3)a., b., c. (unless such investment adviser representatives are already required to register due to their role as supervisors by operation of G.S. 78C-2(3)c.), or d. in the performance of the foregoing activities.

(4) 'Investment adviser covered under federal law' means any adviser who is (i) registered under Section 203 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-3]; or (ii) excluded from the definition of 'investment adviser' under Section 202(a)(11) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-2(a)(11)]. 'Investment adviser covered under federal law' does not include advisers who have received written notification of nonpayment or underpayment of a fee and have failed and refused to pay the fee."

Section 12. Effective October 10, 1999, G.S. 78C-4, as enacted by Section 11 of this act, reads as rewritten:

"(4) 'Investment adviser covered under federal law' means any adviser who is (i) registered under Section 203 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-3]; or (ii) excluded from the definition of 'investment adviser' under Section 202(a)(11) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-2(a)(11)]. ~~'Investment adviser covered under federal law' does not include advisers who have received written notification of nonpayment or underpayment of a fee and have failed and refused to pay the fee.~~"

Section 13. The title to Article 3 of Chapter 78C reads as rewritten:

"ARTICLE 3.

"Registration and Notice Filing Procedures of Investment Advisers and Investment Adviser Representatives."

Section 14. G.S. 78C-16 reads as rewritten:

"**§ 78C-16. Registration and notice filing requirement.**

(a) It is unlawful for any person to transact business in this State as an investment adviser or as an investment adviser representative unless:

(1) ~~He~~ The person is ~~so~~ registered under this Chapter;

(2) ~~His~~ The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940, other investment advisers, investment advisers covered under federal law, dealers, banks, trust companies, savings institutions,

savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars ($1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the Administrator;

(3) ~~He has no place of business in the State and during any period of 12 consecutive months does not direct business communications into this State in any manner to more than 10 clients, other than those specified in subdivision (2), whether or not he or any of the persons to whom the communications are directed is then present in the State; or~~ The person has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those specified in subdivision (2) of this subsection, who are residents of this State; or

(4) ~~He~~ The person is an investment adviser representative employed by or associated with an investment adviser exempt from registration under subdivisions (2) or (3), above.

(b) ~~It is unlawful for any investment adviser required to be registered to employ or associate an investment adviser representative unless the investment adviser representative is registered under this Chapter. The registration of an investment adviser representative is not effective during any period when he is not employed by or associated with an investment adviser registered under this Chapter. When an investment adviser representative begins or terminates employment or association with an investment adviser, the investment adviser shall promptly notify the Administrator.~~ It is unlawful for any (i) person required to be registered as an investment adviser under this Chapter to employ an investment adviser representative unless the investment adviser representative is registered under this Chapter, provided that the registration of an investment adviser representative is not effective during any period when the representative is not employed by an investment adviser registered under this Chapter; or (ii) investment adviser covered under federal law to employ, supervise, or associate with an investment adviser representative having a place of business located in this State, unless the investment adviser representative is registered under this Chapter, or is exempt from registration. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser (in case of G.S. 78C-16(b)(i)), or the investment adviser representative (in case of G.S. 78C-16(b)(ii)) shall notify promptly the Administrator. No investment adviser representative may be registered with more than one investment adviser unless each of the investment advisers which employs or associates the investment adviser representative is under common ownership or control.

(c) Every registration or notice filing expires December 31st of each year unless renewed.

(d) Except with respect to investment advisers whose only clients are those described in G.S. 78C-16(a)(2), it is unlawful for any investment adviser covered

under federal law to conduct advisory business in this State unless the investment adviser complies with the provisions of G.S. 78C-17."

Section 15. G.S. 78C-17 read as rewritten:

"**§ 78C-17. Registration procedures.**

(a) An investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the Administrator or his designee an application together with a consent to service of process pursuant to G.S. 78C-46(b). The application shall contain whatever information the Administrator by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant; in the case of an investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) The applicant's financial condition and history; and

(6) Any information to be furnished or disseminated to any client or prospective client.

If no denial order is in effect and no proceeding is pending under G.S. 78C-19, registration becomes effective at noon of the 30th day after an application is filed. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions.

(a1) The Administrator may require investment advisers covered under federal law to file with the Administrator any documentation filed with the Securities and Exchange Commission as a condition of doing business in this State. This subsection does not apply to investment advisers covered under federal law whose only clients are those described in G.S. 78C-16(a)(2).

(b) Every applicant for initial or renewal registration shall pay a filing fee of two hundred dollars ($200.00) in the case of an investment adviser, and forty-five dollars ($45.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee.

(c) A registered investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(c1) Every person acting as an investment adviser covered under federal law in this State shall pay an initial filing fee of one hundred dollars ($100.00) and a renewal notice filing fee of one hundred dollars ($100.00).

(d) The Administrator may by rule establish minimum net capital requirements not to exceed one hundred thousand dollars ($100,000) for registered investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a], which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(e) The Administrator may by rule require registered investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts up to one hundred thousand dollars ($100,000), subject to the limitations of Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a], and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any investment adviser whose minimum net capital, which may be defined by rule, exceeds one hundred thousand dollars ($100,000). Every bond shall provide for suit thereon by any person who has a cause of action under G.S. 78C-38 and, if the Administrator by rule or order requires, by any person who has a cause of action not arising under this Chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations of G.S. 78C-38(d)."

Section 16. G.S. 78C-18 reads as rewritten:

"**§ 78C-18. Post-Registration provisions.**

(a) Every registered investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and records as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a].

All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.

(b) With respect to investment advisers, the Administrator may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Administrator in his discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered investment adviser shall file such financial reports as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a].

(d) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant or an investment adviser covered under federal law shall promptly file a correcting ~~amendment~~ amendment, if the document is filed with respect to a registrant or when

the amendment is required to be filed with respect to an investment adviser covered under federal law, unless notification of the correction has been given under G.S. 78C-16(b).

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 17. G.S. 78C-46(b) reads as rewritten:

"(b) Every applicant for registration under this Chapter shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

Section 18. Sections 3 and 12 of this act become effective October 10, 1999. The remainder of this act becomes effective October 1, 1997, and Sections 1 through 10 of this act apply to securities offered or sold and to persons who offer or sell securities on or after that date. Sections 11 through 17 of this act apply to advisory business conducted on or after October 1, 1997.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 8, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	NCBA
Tom Gleaton	Secretary of State
Bernard Allen	" " "
Fay R. Brown	" " "
Polly Williams	AARP/OWL
Tom Morrow	Sprint
Terry Desmond	GTE
Lew Smith	FBSM Corp.
Brenda Dougherty	Sprint
Alice Garland	Electricities
Lynn Holmes	BellSouth
Guy Brooks	NCBA

MINUTES
SENATE COMMERCE COMMITTEE
April 10, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building at 11:00 a.m. on Thursday, April 10, 1997. Sixteen members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles called the meeting to order.

The following bills were considered by the Committee:

SB 597, AN ACT TO ALLOW PHYSICIANS PRACTICING PSYCHIATRY AND PSYCHOLOGISTS TO FORM PROFESSIONAL CORPORATIONS WITH LICENSED PROFESSIONAL COUNSELORS.

Senator Lee, sponsor of the bill, was recognized for an explanation. He said the bill allows Licensed Professional Counselors in North Carolina under the Professional Corporation Act to be in collaborative practice with physicians practicing psychiatry, psychologists, and certified clinical social workers. (See attachments for additional information on Licensed Professional Counselors.)

Senator Lee moved that Senate bill 597 be given a favorable report. The motion carried.

SB 439 - AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND THE INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.

Senator Reeves, the bill sponsor, offered a Committee Substitute for the bill and moved its adoption. Motion carried. Senator Reeves said the Committee Substitute amends the North Carolina Securities Act to conform North Carolina law with 1996 changes made in federal securities laws involving the registration of securities dealers and sellers, and investment advisers. He said the bill was a recommendation of the Secretary of State's Office and Mr. David Massey, Counsel to the Secretary of State's Office, assisted in answering questions concerning the legislation.

Senator Reeves moved that the Committee Substitute for Senate Bill 439 be given a favorable report. The motion carried.

SB 564, AN ACT TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, ACCOUNT NUMBER, AND TYPE OF ACCOUNT OF ANY CUSTOMER.

Senator Reeves, the bill sponsor, and Mr. Paul Stock representing the N. C. Bankers' Association, explained the bill. After much discussion by the Committee and expressions of concern over the disclosure of information allowed by the bill, Senator Ballance moved that S. B. 564 be placed in a subcommittee for study. Motion carried. The Chairman appointed the following members of the Committee to the Subcommittee:

Senator Warren, Chairman
Senator Ballance
Senator Lee.

SB 577, AN ACT TO AMEND THE LAW GOVERNING INSURANCE PREMIUM FINANCING.

Senator Reeves, the bill sponsor, said the legislation makes several changes to the laws regulating insurance premium financing companies and insurance financing arrangements. (See attached memorandum for detailed explanation of the bill.) Several amendments were suggested for the bill. Since the amendments were not in proper form and order, the Chairman asked the staff and sponsor to get the amendments in order and he would reschedule the bill to heard at its next meeting.

There being no further business, the meeting adjourned at 11:45 a.m.

Senator R. C. Soles, Jr., Chairman

Mrs. Joan R. Leatherman
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Thursday, April 10, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **597** Professional Counselors.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **439** Securities/Investment Advisers/AB
Draft Number: PCS1717
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 597

Short Title: Professional Counselors. (Public)

Sponsors: Senators Lee; Ballantine, Foxx, Gulley, Horton, Hoyle, Jordan, Martin of Guilford, McDaniel, Miller, Perdue, Phillips, Rand, and Soles.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW PHYSICIANS PRACTICING PSYCHIATRY AND PSYCHOLOGISTS TO FORM PROFESSIONAL CORPORATIONS WITH LICENSED PROFESSIONAL COUNSELORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-14(c) reads as rewritten:

"(c) A professional corporation may also be formed by and between or among:

(1) A licensed psychologist and a physician practicing psychiatry to render psychotherapeutic and related services;

(2) Any combination of a registered nurse, nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, certified nurse midwife, and certified nurse anesthetist, to render nursing and related services that the respective stockholders are licensed, certified, or otherwise approved to provide;

(3) A physician and a physician assistant who is licensed, registered, or otherwise certified under Chapter 90 of the General Statutes to render medical and related services;

(4) A physician practicing psychiatry, or a licensed psychologist, or both, and a certified clinical specialist in psychiatric and mental health nursing, ~~or~~ a certified clinical social worker, ~~or both,~~ a licensed professional counselor, or each of them, to render psychotherapeutic and related services that the respective

stockholders are licensed, certified, or otherwise approved to provide;

(5) A physician and any combination of a nurse practitioner, certified clinical specialist in psychiatric and mental health nursing, or certified nurse midwife, registered or otherwise certified under Chapter 90 of the General Statutes, to render medical and related services that the respective stockholders are licensed, certified, or otherwise approved to provide; and

(6) A physician practicing anesthesiology and a certified nurse anesthetist to render anesthesia and related medical services that the respective stockholders are licensed, certified, or otherwise approved to provide."

Section 2. G.S. 55B-2(6) reads as rewritten:

"(6) The term 'professional service' means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83A, 'Architects'; Chapter 84, 'Attorneys-at-Law'; Chapter 93, 'Public Accountants'; and Article 1, 'Practice of Medicine,' Article 2, 'Dentistry,' Article 6, 'Optometry,' Article 7, 'Osteopathy,' Article 8, 'Chiropractic,' Article 9A, 'Nursing Practice Act,' with regard to registered nurses, Article 11, 'Veterinarians,' Article 12A, 'Podiatrists,' Article 18A, 'Practicing Psychologists,' ~~and~~ Article 18D, 'Occupational Therapy,' and Article 24, 'Licensed Professional Counselors,' of Chapter 90; Chapter 89C, 'Engineering and Land Surveying'; Chapter 89A, 'Landscape Architects'; Chapter 90B, 'Social Worker Certification Act' with regard to Certified Clinical Social Workers as defined by G.S. 90B-3; Chapter 89E, 'Geologists'; and Chapter 89B, 'Foresters.'"

Section 3. This act becomes effective October 1, 1997.

SENATE BILL 597

- This Bill allows Licensed Professional Counselors in North Carolina under the Professional Corporation Act to be in collaborative practice with physicians practicing psychiatry, psychologists, and certified clinical social workers.

- Licensed Professional Counselors are licensed under the provisions of G.S. §90-329 through §90-343 and are licensed and regulated by the North Carolina Board of Licensed Professional Counselors.

- Licensed Professional Counselors have a Master's Degree in Counseling and to be licensed have to additionally have at least two years of Master's or Post-Master's counseling experience in a professional setting, including a minimum of 2,000 hours of supervised professional practice.

- Licensed Professional Counselors also have to pass an examination approved by the North Carolina Board of Licensed Professional Counselors in North Carolina.

- There are approximately 1,500 Licensed Professional Counselors in North Carolina.

- Licensed Professional Counselors can better serve the consuming public by being permitted to have the right to have collaborative practices with physicians practicing psychiatry, psychologists, and certified clinical social workers by providing different treatment modalities in the same office.

- Adding Licensed Professional Counselors to the existing collaborative practice statute will increase accessibility to cost efficient mental health care services, particularly in the rural communities.

- Adding Licensed Professional Counselors to the existing collaborative practice statute will not displace or require other mental health care professionals to collaborate.

- Validates the counselor education programs offered in the UNC System and increases employment opportunities in the private sector to these graduates.

- Licensed counselors are employed in every type of work setting from group practices to hospital settings. This Bill allows the members of a group practice to practice together if they so choose. (It is not mandatory.)

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April 10, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Commerce Committee

FROM: Linwood Jones, Counsel

RE: Senate Bill 597 (Licensed Professional Counselors)

Senate Bill 597 will allow psychiatrists and/or licensed psychologists to form professional corporations with licensed professional counselors for the purpose of providing psychotherapeutic and related services. This bill does not expand the scope of practice of these practitioners; they can each continue to provide only those services that their respective professions are licensed to provide.

G.S. 55B-14(c) sets ou the different combinations of professional health services that are allowed under current law. Current law already allows psychiatrists and/or psychologists to practice together in professional corporations with certified clinical specialists in psychiatric and mental health nursing and with certified clinical social workers. Section 1 of the bill adds licensed professional counselors.

Section 2 of the bill amends the definition of "professional services" under G.S. 55B-2 to include licensed professional counselors.

Section 3 of the bill makes this act effective October 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 439*

Short Title: Securities/Investment Advisers/AB. (Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND THE INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.

The General Assembly of North Carolina enacts:

I. Securities

Section 1. G.S. 78A-2(9) reads as rewritten:

"(9) 'Salesman' means any individual other than a dealer who represents a dealer in effecting or attempting to effect purchases or sales of securities. 'Salesman' does not include an individual who represents (i) an issuer in effecting transfers in securities described in sub-subdivision (2)d. of this section or in effecting transactions in a covered security as described in Section 18(b)(3) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(3)] and Section 18(b)(4)(D) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(4)(d)]; or (ii) a dealer in effecting transactions in this State limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o(h)(2)]. A partner, executive officer, or director of a dealer, or a person occupying a similar status or performing similar functions, is a salesman only if he otherwise comes within this definition."

Section 2. G.S. 78A-2 is amended by adding a new subdivision to read:

"(11a) 'Security covered under federal law' means any security that is a covered security under Section 18(b) of the Securities Act of

1933 [15 U.S.C. § 77r(b)] or rules or regulations adopted under that section. 'Security covered under federal law' does not include a security for which a fee required by this Article has not been paid and promptly remedied following written notification from the Administrator to the issuer of the nonpayment or underpayment of the fee."

Section 3. Effective October 10, 1999, G.S. 78A-2(11a), as enacted by Section 2 of this act, reads as rewritten:

"(11a) 'Security covered under federal law' means any security that is a covered security under Section 18(b) of the Securities Act of 1933 [15 U.S.C. §77r(b)] or rules or regulations adopted under that section. ~~'Security covered under federal law' does not include a security for which a fee required by this Article has not been paid and promptly remedied following written notification from the Administrator to the issuer of the nonpayment or underpayment of the fee.~~"

Section 4. The title to Article 4 of Chapter 78A reads as rewritten:

"ARTICLE 4.

"Registration and Notice Filing Procedures of Securities."

Section 5. G.S. 78A-24 reads as rewritten:

"**§ 78A-24. Registration requirement.**

It is unlawful for any person to offer or sell any security in this State unless (i) it is registered under this ~~Chapter or~~ Chapter, (ii) the security or transaction is exempted under G.S. 78A-16 or 78A-17 and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18, or (iii) it is a security covered under federal law."

Section 6. Article 4 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"**§ 78A-31. Securities covered under federal law.**

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

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

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

Securities Act of 1933, which shall be filed concurrently with the Administrator.

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

(b) With regard to any security that is covered under Section 18(b)(4)(D) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(4)(d)], the Administrator, by rule or order, may require the issuer to file a notice on SEC Form D [17 C.F.R. § 239.500] and a consent to service of process signed by the issuer no later than 15 days after the first sale of the security in this State. The Administrator may, by rule, establish a fee to recover costs for filing required by this section, not to exceed one hundred fifty dollars ($150.00).

(c) The Administrator, by rule or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a security covered under Section 18(b)(3) or (4) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(3) or (4)]. The Administrator may, by rule, establish a fee to recover costs for any filing required under this section, not to exceed one hundred fifty dollars ($150.00).

(d) The Administrator may issue a stop order suspending the offer and sale of a security covered under 18(b)(1) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(1)], if the Administrator finds that (i) the order is in the public interest, and (ii) there is a failure to comply with any condition established under this section.

(e) The Administrator, by rule or order, may waive any of the requirements set by this section."

Section 7. G.S. 78A-38 reads as rewritten:

"**§ 78A-38. Post-registration provisions.**

(a) Every registered dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o]. ~~All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.~~

(b) Every registered dealer shall file such financial reports as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o].

(c) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under G.S. 78A-36(b).

(d) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the

Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 8. G.S. 78A-49(d) reads as rewritten:

"(d) The Administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by G.S. 78A-16 or 78A-17 (except 78A-17(9), (17)) and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18 or is a security covered under federal law."

Section 9. G.S. 78A-63(a) reads as rewritten:

"(a) Sections 78A-8, 78A-10, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an offer to buy is made and accepted in this State."

Section 10. G.S. 78A-63(f) reads as rewritten:

"(f) Every applicant for registration under this Chapter and every issuer who proposes to offer a security in this State through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

II. Investment Advisers

Section 11. G.S. 78C-2 reads as rewritten:

"§ 78C-2. Definitions.

When used in this Chapter, the definitions of G.S. 78A-2 shall apply along with the following, unless the context otherwise requires:

(1) 'Investment adviser' means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. 'Investment adviser' also includes financial planners and other

persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. 'Investment adviser' does not include:

a. An investment adviser representative or a person excluded from the definition of investment adviser representative pursuant to G.S. 78C-2(3)c.;

b. A bank, savings institution, or trust company;

c. A lawyer, accountant, engineer, or teacher whose performance of any such services is solely incidental to the practice of his profession;

d. A dealer or its salesman whose performance of these services is solely incidental to the conduct of its business as a dealer and who receives no special compensation for them;

e. A publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

f. A person solely by virtue of such person's services to or on behalf of any 'business development company' as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 provided the business development company is not an 'investment company' by reason of Section 3(c)(1) of the Investment Company Act of 1940, as both acts were in effect on June 1, 1988;

g. A personal representative of a decedent's estate, guardian, conservator, receiver, attorney in fact, trustee in bankruptcy, trustee of a testamentary trust, or a trustee of an inter vivos trust, not otherwise engaged in providing investment advisory services, and the performance of these services is not a part of a plan or scheme to evade registration or the substantive requirements of this Chapter;

h. A licensed real estate agent or broker whose only compensation is a commission on real estate sold;

i. An individual or company primarily engaged in acting as a business broker whose only compensation is a commission on the sale of a business;

j. An individual who, as an employee, officer or director of, or general partner in, another person and in the course of

performance of his duties as such, provides investment advice to such other person, or to entities that are affiliates of such other person, or to employee benefit plans of such other person or its affiliated entities, or, with respect to such employee benefit plans, to employees of such other person or its affiliated entities;

k. Any person who is exempt from registration under the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this sub-subsection to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988;

l. An employee of a person described in subdivision b., e., f., g., h., or j. of G.S. 78C-2(1) acting on behalf of such person within the scope of his employment;

m. An investment adviser who is covered under federal law as defined in subdivision (4) of this section.

~~m.~~ n. Such other persons not within the intent of this subsection as the Administrator may by rule or order designate.

(2) 'Investment Advisers Act of 1940' means the federal statute of that name as amended before or after the effective date of this Chapter.

(3) 'Investment adviser representative' means any partner, officer, director (or a person occupying a similar status or performing similar functions) or other individual ~~employed by or associated with an investment adviser, except clerical personnel, who:~~ except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under this Chapter, or who has a place of business located in this State and is employed by or associated with an adviser excluded under the definition of 'investment adviser covered under federal law', and who:

a. Makes any recommendations or otherwise renders advice regarding securities directly to clients,

b. Manages accounts or portfolios of clients,

c. Determines which recommendations or advice regarding securities should be given; provided, however if there are more than five such persons employed by or associated with an investment adviser, who do not otherwise come within the meaning of G.S. 78C-2(3)a., b., d., or e., then only the direct supervisors of such persons are deemed to

be investment adviser representatives under G.S. 78C-2(3)c.,

d. Solicits, offers or negotiates for the sale of or sells investment advisory services, unless such person is a dealer or salesman registered under Chapter 78A of the General Statutes and the person would not be an investment adviser representative except for the performance of the activities described in G.S. 78C-2(3)d., or

e. Directly supervises investment adviser representatives as defined in G.S. 78C-2(3)a., b., c. (unless such investment adviser representatives are already required to register due to their role as supervisors by operation of G.S. 78C-2(3)c.), or d. in the performance of the foregoing activities.

(4) 'Investment adviser covered under federal law' means any adviser who is (i) registered under Section 203 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-3]; or (ii) excluded from the definition of 'investment adviser' under Section 202(a)(11) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-2(a)(11)]. 'Investment adviser covered under federal law' does not include advisers who have received written notification of nonpayment or underpayment of a fee and have failed and refused to pay the fee."

Section 12. Effective October 10, 1999, G.S. 78C-4, as enacted by Section 11 of this act, reads as rewritten:

"(4) 'Investment adviser covered under federal law' means any adviser who is (i) registered under Section 203 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-3]; or (ii) excluded from the definition of 'investment adviser' under Section 202(a)(11) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-2(a)(11)]. ~~'Investment adviser covered under federal law' does not include advisers who have received written notification of nonpayment or underpayment of a fee and have failed and refused to pay the fee.~~"

Section 13. The title to Article 3 of Chapter 78C reads as rewritten:

"ARTICLE 3.

"Registration and Notice Filing Procedures of Investment Advisers and Investment Adviser Representatives."

Section 14. G.S. 78C-16 reads as rewritten:

"**§ 78C-16. Registration and notice filing requirement.**

(a) It is unlawful for any person to transact business in this State as an investment adviser or as an investment adviser representative unless:

(1) ~~He~~ The person is ~~so~~ registered under this Chapter;

(2) ~~His~~ The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940, other investment advisers, investment advisers covered under federal law, dealers, banks, trust companies, savings institutions,

savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars ($1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the Administrator;

(3) ~~He has no place of business in the State and during any period of 12 consecutive months does not direct business communications into this State in any manner to more than 10 clients, other than those specified in subdivision (2), whether or not he or any of the persons to whom the communications are directed is then present in the State; or~~ The person has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those specified in subdivision (2) of this subsection, who are residents of this State; or

(4) ~~He~~ The person is an investment adviser representative employed by or associated with an investment adviser exempt from registration under subdivisions (2) or (3), above.

(b) ~~It is unlawful for any investment adviser required to be registered to employ or associate an investment adviser representative unless the investment adviser representative is registered under this Chapter. The registration of an investment adviser representative is not effective during any period when he is not employed by or associated with an investment adviser registered under this Chapter. When an investment adviser representative begins or terminates employment or association with an investment adviser, the investment adviser shall promptly notify the Administrator.~~ It is unlawful for any (i) person required to be registered as an investment adviser under this Chapter to employ an investment adviser representative unless the investment adviser representative is registered under this Chapter, provided that the registration of an investment adviser representative is not effective during any period when the representative is not employed by an investment adviser registered under this Chapter; or (ii) investment adviser covered under federal law to employ, supervise, or associate with an investment adviser representative having a place of business located in this State, unless the investment adviser representative is registered under this Chapter, or is exempt from registration. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser (in case of G.S. 78C-16(b)(i)), or the investment adviser representative (in case of G.S. 78C-16(b)(ii)) shall notify promptly the Administrator. No investment adviser representative may be registered with more than one investment adviser unless each of the investment advisers which employs or associates the investment adviser representative is under common ownership or control.

(c) Every registration or notice filing expires December 31st of each year unless renewed.

(d) Except with respect to investment advisers whose only clients are those described in G.S. 78C-16(a)(2), it is unlawful for any investment adviser covered

under federal law to conduct advisory business in this State unless the investment adviser complies with the provisions of G.S. 78C-17."

Section 15. G.S. 78C-17 read as rewritten:

"**§ 78C-17. Registration procedures.**

(a) An investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the Administrator or his designee an application together with a consent to service of process pursuant to G.S. 78C-46(b). The application shall contain whatever information the Administrator by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant; in the case of an investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) The applicant's financial condition and history; and

(6) Any information to be furnished or disseminated to any client or prospective client.

If no denial order is in effect and no proceeding is pending under G.S. 78C-19, registration becomes effective at noon of the 30th day after an application is filed. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions.

(a1) The Administrator may require investment advisers covered under federal law to file with the Administrator any documentation filed with the Securities and Exchange Commission as a condition of doing business in this State. This subsection does not apply to investment advisers covered under federal law whose only clients are those described in G.S. 78C-16(a)(2).

(b) Every applicant for initial or renewal registration shall pay a filing fee of two hundred dollars ($200.00) in the case of an investment adviser, and forty-five dollars ($45.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee.

(c) A registered investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(c1) Every person acting as an investment adviser covered under federal law in this State shall pay an initial filing fee of one hundred dollars ($100.00) and a renewal notice filing fee of one hundred dollars ($100.00).

(d) The Administrator may by rule establish minimum net capital requirements not to exceed one hundred thousand dollars ($100,000) for registered investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a], which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(e) The Administrator may by rule require registered investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts up to one hundred thousand dollars ($100,000), subject to the limitations of Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a], and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any investment adviser whose minimum net capital, which may be defined by rule, exceeds one hundred thousand dollars ($100,000). Every bond shall provide for suit thereon by any person who has a cause of action under G.S. 78C-38 and, if the Administrator by rule or order requires, by any person who has a cause of action not arising under this Chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations of G.S. 78C-38(d)."

Section 16. G.S. 78C-18 reads as rewritten:

"**§ 78C-18. Post-Registration provisions.**

(a) Every registered investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and records as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a].

All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.

(b) With respect to investment advisers, the Administrator may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Administrator in his discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered investment adviser shall file such financial reports as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a].

(d) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant or an investment adviser covered under federal law shall promptly file a correcting ~~amendment~~ amendment, if the document is filed with respect to a registrant or when

the amendment is required to be filed with respect to an investment adviser covered under federal law, unless notification of the correction has been given under G.S. 78C-16(b).

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 17. G.S. 78C-46(b) reads as rewritten:

"(b) Every applicant for registration under this Chapter shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

Section 18. Sections 3 and 12 of this act become effective October 10, 1999. The remainder of this act becomes effective October 1, 1997, and Sections 1 through 10 of this act apply to securities offered or sold and to persons who offer or sell securities on or after that date. Sections 11 through 17 of this act apply to advisory business conducted on or after October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 439*
Proposed Committee Substitute S439-PCS1717

Short Title: Securities/Investment Advisers/AB. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND THE INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.

The General Assembly of North Carolina enacts:

I. Securities

Section 1. G.S. 78A-2(2)d.1. reads as rewritten:

"1. The security is exempted under subdivisions (1), (2), (3), (4), (5), (7), (9), (10), (11), (13), or (14) of G.S. 78A-16, or the transaction is exempted under G.S. 78A-17, and such exemption has not been denied or revoked under G.S. 78A-18, or the transaction is in a security covered under federal law, or".

Section 2. G.S. 78A-2(9) reads as rewritten:

"(9) 'Salesman' means any individual other than a dealer who represents a dealer in effecting or attempting to effect purchases or sales of securities. 'Salesman' does not include an individual who represents (i) an issuer in effecting transactions in a security described in sub-subdivision (2)d. of this section or a security covered under federal law, provided no commission or other special remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this State; or (ii) a dealer in effecting transactions in this State limited to those transactions

described in Section 15(h)(2) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o(h)(2)]. A partner, executive officer, or director of a dealer, or a person occupying a similar status or performing similar functions, is a salesman only if he otherwise comes within this definition."

Section 3. G.S. 78A-2 is amended by adding a new subdivision to read:

"(11a) 'Security covered under federal law' means any security that is a covered security under Section 18(b) of the Securities Act of 1933 [15 U.S.C. § 77r(b)] or rules or regulations adopted under that section. 'Security covered under federal law' does not include a security for which a fee required by this Article has not been paid and promptly remedied following written notification from the Administrator to the issuer of the nonpayment or underpayment of the fee."

Section 4. Effective October 10, 1999, G.S. 78A-2(11a), as enacted by Section 3 of this act, reads as rewritten:

"(11a) 'Security covered under federal law' means any security that is a covered security under Section 18(b) of the Securities Act of 1933 [15 U.S.C. § 77r(b)] or rules or regulations adopted under that section. ~~'Security covered under federal law' does not include a security for which a fee required by this Article has not been paid and promptly remedied following written notification from the Administrator to the issuer of the nonpayment or underpayment of the fee.~~"

Section 5. G.S. 78A-17(16) reads as rewritten:

"(16) Any offer to purchase or to sell or any sale or issuance of a ~~security~~ security, other than a security covered under federal law, pursuant to a plan approved by the Administrator after a hearing conducted pursuant to the provisions of ~~G.S. 78A-30 of this Chapter.~~ G.S. 78A-30."

Section 6. The title to Article 4 of Chapter 78A reads as rewritten:

"ARTICLE 4.

"Registration and Notice Filing Procedures of Securities."

Section 7. G.S. 78A-24 reads as rewritten:

"**§ 78A-24. Registration requirement.**

It is unlawful for any person to offer or sell any security in this State unless (i) it is registered under this ~~Chapter or~~ Chapter, (ii) the security or transaction is exempted under G.S. 78A-16 or 78A-17 and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18, or (iii) it is a security covered under federal law."

Section 8. G.S. 78A-30(d) reads as rewritten:

"(d) The Administrator's authority under this section shall extend to the issuance or the delivery of securities or ~~the delivery of~~ other consideration:

(1) By any corporation organized under the laws of this State; or

(2) In any transaction which is subject to the registration or qualification requirements of this Chapter or which would be so subject except for the availability of an exemption under G.S. 78A-16 or ~~78A-17 or by reason of G.S. 78A-2(8)(f).~~ 78A-17, by reason of G.S. 78A-2(8)(f), or by reason that the security is a security covered under federal law."

Section 9. Article 4 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"**§ 78A-31. Securities covered under federal law.**

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

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

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

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

(b) With regard to any security that is covered under Section 18(b)(4)(D) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(4)(d)], the Administrator, by rule or order, may require the issuer to file a notice on SEC Form D [17 C.F.R. § 239.500] and a consent to service of process signed by the issuer no later than 15 days after the first sale of the security in this State. The Administrator may, by rule, establish a fee to recover costs for filing required by this section, not to exceed one hundred fifty dollars ($150.00).

(c) The Administrator, by rule or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a security covered under Section 18(b)(3) or (4) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(3) or (4)]. The Administrator may, by rule, establish a fee to recover costs for any filing required under this section, not to exceed one hundred fifty dollars ($150.00).

(d) The Administrator may issue a stop order or a cease and desist order suspending the offer and sale of a covered security except a covered security under

Section 18(b)(1) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(1)], if the Administrator finds that (i) the order is in the public interest, and (ii) there is a failure to comply with any condition established under this section.

(e) The Administrator, by rule or order, may waive any of the requirements set by this section."

Section 10. G.S. 78A-38 reads as rewritten:

"**§ 78A-38. Post-registration provisions.**

(a) Every registered dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o]. ~~All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.~~

(b) Every registered dealer shall file such financial reports as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o].

(c) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under G.S. 78A-36(b).

(d) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 11. G.S. 78A-49(d) reads as rewritten:

"(d) The Administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by G.S. 78A-16 or 78A-17 (except 78A-17(9), (17)) and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18 or is a security covered under federal law."

Section 12. G.S. 78A-63(a) reads as rewritten:

"(a) Sections 78A-8, 78A-10, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an offer to buy is made and accepted in this State."

Section 13. G.S. 78A-63(f) reads as rewritten:

"(f) Every applicant for registration under this Chapter and every issuer who proposes to offer a security in this State through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in

office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

II. Investment Advisers

Section 14. G.S. 78C-2 reads as rewritten:

"**§ 78C-2. Definitions.**

When used in this Chapter, the definitions of G.S. 78A-2 shall apply along with the following, unless the context otherwise requires:

(1) 'Investment adviser' means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. 'Investment adviser' also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. 'Investment adviser' does not include:

a. An investment adviser representative or a person excluded from the definition of investment adviser representative pursuant to G.S. 78C-2(3)c.;

b. A bank, savings institution, or trust company;

c. A lawyer, accountant, engineer, or teacher whose performance of any such services is solely incidental to the practice of his profession;

d. A dealer or its salesman whose performance of these services is solely incidental to the conduct of its business as a dealer and who receives no special compensation for them;

e. A publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

f. A person solely by virtue of such person's services to or on behalf of any 'business development company' as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 provided the business development company is not an 'investment company' by reason of Section 3(c)(1) of the Investment Company Act of 1940, as both acts were in effect on June 1, 1988;

g. A personal representative of a decedent's estate, guardian, conservator, receiver, attorney in fact, trustee in bankruptcy, trustee of a testamentary trust, or a trustee of an inter vivos trust, not otherwise engaged in providing investment advisory services, and the performance of these services is not a part of a plan or scheme to evade registration or the substantive requirements of this Chapter;

h. A licensed real estate agent or broker whose only compensation is a commission on real estate sold;

i. An individual or company primarily engaged in acting as a business broker whose only compensation is a commission on the sale of a business;

j. An individual who, as an employee, officer or director of, or general partner in, another person and in the course of performance of his duties as such, provides investment advice to such other person, or to entities that are affiliates of such other person, or to employee benefit plans of such other person or its affiliated entities, or, with respect to such employee benefit plans, to employees of such other person or its affiliated entities;

k. Any person who is exempt from registration under the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this sub-subsection to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988;

l. An employee of a person described in subdivision b., e., f., g., h., or j. of G.S. 78C-2(1) acting on behalf of such person within the scope of his employment;

m. An investment adviser who is covered under federal law as defined in subdivision (4) of this section.

~~m.~~ n. Such other persons not within the intent of this subsection as the Administrator may by rule or order designate.

(2) 'Investment Advisers Act of 1940' means the federal statute of that name as amended before or after the effective date of this Chapter.

(3) 'Investment adviser representative' means any partner, officer, director (or a person occupying a similar status or performing similar functions) or other individual ~~employed by or associated with an investment adviser, except clerical personnel, who:~~ except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under this Chapter, or who has a place of business located in this State and is employed by or associated with an adviser excluded under the definition of 'investment adviser covered under federal law', and who:

a. Makes any recommendations or otherwise renders advice regarding securities directly to clients,

b. Manages accounts or portfolios of clients,

c. Determines which recommendations or advice regarding securities should be given; provided, however if there are more than five such persons employed by or associated with an investment adviser, who do not otherwise come within the meaning of G.S. 78C-2(3)a., b., d., or e., then only the direct supervisors of such persons are deemed to be investment adviser representatives under G.S. 78C-2(3)c.,

d. Solicits, offers or negotiates for the sale of or sells investment advisory services, unless such person is a dealer or salesman registered under Chapter 78A of the General Statutes and the person would not be an investment adviser representative except for the performance of the activities described in G.S. 78C-2(3)d., or

e. Directly supervises investment adviser representatives as defined in G.S. 78C-2(3)a., b., c. (unless such investment adviser representatives are already required to register due to their role as supervisors by operation of G.S. 78C-2(3)c.), or d. in the performance of the foregoing activities.

(4) 'Investment adviser covered under federal law' means any adviser who is (i) registered under Section 203 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-3]; or (ii) excluded from the

definition of 'investment adviser' under Section 202(a)(11) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-2(a)(11)]. 'Investment adviser covered under federal law' does not include advisers who have received written notification of nonpayment or underpayment of a fee and have failed and refused to pay the fee."

Section 15. Effective October 10, 1999, G.S. 78C-2(4) as enacted by Section 14 of this act, reads as rewritten:

"(4) 'Investment adviser covered under federal law' means any adviser who is (i) registered under Section 203 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-3]; or (ii) excluded from the definition of 'investment adviser' under Section 202(a)(11) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-2(a)(11)]. ~~'Investment adviser covered under federal law' does not include advisers who have received written notification of nonpayment or underpayment of a fee and have failed and refused to pay the fee.~~"

Section 16. The title to Article 3 of Chapter 78C reads as rewritten:

"ARTICLE 3.

"Registration and Notice Filing Procedures of Investment Advisers and Investment Adviser Representatives."

Section 17. G.S. 78C-16 reads as rewritten:

"§ 78C-16. Registration and notice filing requirement.

(a) It is unlawful for any person to transact business in this State as an investment adviser or as an investment adviser representative unless:

(1) ~~He~~ The person is ~~so~~ registered under this Chapter;

(2) ~~His~~ The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940, other investment advisers, investment advisers covered under federal law, dealers, banks, trust companies, savings institutions, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars ($1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the Administrator;

(3) ~~He has no place of business in the State and during any period of 12 consecutive months does not direct business communications into this State in any manner to more than 10 clients, other than those specified in subdivision (2), whether or not he or any of the persons to whom the communications are directed is then present in the State; or~~ The person has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those specified in subdivision (2) of this subsection, who are residents of this State; or

(4) ~~He~~ The person is an investment adviser representative employed by or associated with an investment adviser exempt from registration under subdivisions (2) or (3), above.

(b) ~~It is unlawful for any investment adviser required to be registered to employ or associate an investment adviser representative unless the investment adviser representative is registered under this Chapter. The registration of an investment adviser representative is not effective during any period when he is not employed by or associated with an investment adviser registered under this Chapter. When an investment adviser representative begins or terminates employment or association with an investment adviser, the investment adviser shall promptly notify the Administrator.~~ It is unlawful for any (i) person required to be registered as an investment adviser under this Chapter to employ an investment adviser representative unless the investment adviser representative is registered under this Chapter, provided that the registration of an investment adviser representative is not effective during any period when the representative is not employed by an investment adviser registered under this Chapter; or (ii) investment adviser covered under federal law to employ, supervise, or associate with an investment adviser representative having a place of business located in this State, unless the investment adviser representative is registered under this Chapter, or is exempt from registration. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser (in case of G.S. 78C-16(b)(i)), or the investment adviser representative (in case of G.S. 78C-16(b)(ii)) shall notify promptly the Administrator. No investment adviser representative may be registered with more than one investment adviser unless each of the investment advisers which employs or associates the investment adviser representative is under common ownership or control.

(c) Every registration or notice filing expires December 31st of each year unless renewed.

(d) Except with respect to investment advisers whose only clients are those described in G.S. 78C-16(a)(2), it is unlawful for any investment adviser covered under federal law to conduct advisory business in this State unless the investment adviser complies with the provisions of G.S. 78C-17."

Section 18. G.S. 78C-17 reads as rewritten:

"**§ 78C-17. Registration procedures.**

(a) An investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the Administrator or his designee an application together with a consent to service of process pursuant to G.S. 78C-46(b). The application shall contain whatever information the Administrator by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant; in the case of an investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar

status or performing similar functions, or any person directly or indirectly controlling the investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) The applicant's financial condition and history; and

(6) Any information to be furnished or disseminated to any client or prospective client.

If no denial order is in effect and no proceeding is pending under G.S. 78C-19, registration becomes effective at noon of the 30th day after an application is filed. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions.

(a1) The Administrator may require investment advisers covered under federal law to file with the Administrator any documentation filed with the Securities and Exchange Commission as a condition of doing business in this State. This subsection does not apply to investment advisers covered under federal law whose only clients are those described in G.S. 78C-16(a)(2).

(b) Every applicant for initial or renewal registration shall pay a filing fee of two hundred dollars ($200.00) in the case of an investment adviser, and forty-five dollars ($45.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee.

(c) A registered investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(c1) Every person acting as an investment adviser covered under federal law in this State shall pay an initial filing fee of one hundred dollars ($100.00) and a renewal notice filing fee of one hundred dollars ($100.00).

(d) The Administrator may by rule establish minimum net capital requirements not to exceed one hundred thousand dollars ($100,000) for registered investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a], which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(e) The Administrator may by rule require registered investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts up to one hundred thousand dollars ($100,000), subject to the limitations of Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a], and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any investment adviser whose minimum net capital, which may be

defined by rule, exceeds one hundred thousand dollars ($100,000). Every bond shall provide for suit thereon by any person who has a cause of action under G.S. 78C-38 and, if the Administrator by rule or order requires, by any person who has a cause of action not arising under this Chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations of G.S. 78C-38(d)."

Section 19. G.S. 78C-18 reads as rewritten:

"**§ 78C-18. Post-Registration provisions.**

(a) Every registered investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and records as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a].

All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.

(b) With respect to investment advisers, the Administrator may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Administrator in his discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered investment adviser shall file such financial reports as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a].

(d) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant or an investment adviser covered under federal law shall promptly file a correcting ~~amendment~~ amendment, if the document is filed with respect to a registrant or when the amendment is required to be filed with respect to an investment adviser covered under federal law, unless notification of the correction has been given under G.S. 78C-16(b).

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 20. G.S. 78C-46(b) reads as rewritten:

"(b) Every applicant for registration under this Chapter shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive

service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

Section 21. Sections 4 and 15 of this act become effective October 10, 1999. The remainder of this act becomes effective October 1, 1997. Sections 1 through 13 of this act apply to securities offered or sold and to persons who offer or sell securities on or after the applicable effective date of each of these sections. Sections 14 through 20 of this act apply to advisory business conducted on or after the applicable effective date of each of these sections.

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April 10, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 439 - CONFORM SECURITIES AND INVESTMENT ADVISORS LAW TO FEDERAL LAW** - Senator Reeves

The Proposed Committee Substitute for Senate Bill 439 amends the North Carolina Securities Act to conform North Carolina law with 1996 changes made in federal securities laws involving the registration of securities dealers and sellers, and investment advisers. This bill is a recommendation of the Secretary of State's office.

The National Securities Markets Improvement Act of 1996 preempts state regulation of certain "covered securities" with federal securities registration. Under this law the states retain investigative and enforcement authority with respect to securities fraud and deceit. The law also allows the states to require "notice" filings of the federal securities filings with the state and permits the states to continue to charge filing and registration fees for these securities. The new federal law also exempts from Securities Exchange Commission (SEC) registration investment advisors subject to state regulation unless they manage at least $25 million in assets and serve as advisers to certain federally registered investment companies. For those investment advisers subject to SEC registration the states still have the right to require "notice filings" and registration fees, and may also investigate fraud and deceit. The law also limits recordkeeping, capital, or bonding requirements to no more than those required in the state where the investment adviser has its principal place of business. The law exempts from state registration advisers who do not have a place of business in the state and who have fewer than 6 clients who were residents of the State for the preceding 12-month period.

Senate Bill 439 amends NC law to conform to those matters still within the control of the State, and to exempt those matters on which federal law preempts state law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Sections 1 through 4 involve amendments to definitions to distinguish matters subject to state regulation and those subject to federal regulation. Section 4 amends effective October 1, 1999 the definition amended in Section 3, because federal law give the states three years to regulate securities otherwise exempt when the issuer fails file the required notice and pay the required state fees.

Section 9 spells out the notice filing registration requirements for securities that are exempt from state regulation, including the fees that the Secretary of State may charge. This section also includes the authority to require the securities issuer to consent to service of process in this State and to issue a stop order for an issuer who fails to comply with this section.

Sections 10 through 13 make conforming changes to other related statutes.

Sections 14 and 15 involve amendments to definitions of investment advisers to make clear which advisers are regulated by state law and which advisers are not. Section 15 amends effective October 1, 1999 the definition amended in Section 14, because federal law gives the states three years to regulate advisers otherwise exempt when the advisor fails to register and pay the required state fees.

Section 17 specifies that all investment advisers transacting business in the State must register unless they are exempt under federal law and those advisers exempt under federal law must still make a notice filing and pay the appropriate fees.

Sections 18, 19, and 20 make conforming changes to other related statutes.

The bill becomes effective October 1, 1997 except for Sections 4 and 15 which will amend sections 3 and 14 once the 3-year enforcement overlap period expires.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 564

Short Title: Amend Financial Privacy Act. (Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, ACCOUNT NUMBER, AND TYPE OF ACCOUNT OF ANY CUSTOMER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53B-8 reads rewritten:

"**§ 53B-8. Disclosure of financial records.**

No financial institution or its officer, employee, or agent may disclose a customer's financial record to a government authority except as provided in this Chapter. This section does not prohibit a financial institution from giving notice of or disclosing a financial record to a government authority, as defined in G.S. 53B-2(4), to the same extent as is authorized with respect to federal government authorities in the Right to Financial Privacy Act § 1103(d), 12 U.S.C. § 3403(d). Nothing in this Chapter shall prohibit a financial institution or its officer, employee, or agent from disclosing the name, address, account number, and type of account of any customer or from notifying a government authority that the financial institution or its officer, employee, or agent has information that may be relevant to a possible violation of law or regulation. The information shall be limited to a description of the suspected illegal activity and the name or other identifying information concerning any individual, corporation, or account involved in the activity. Any financial institution or its officer, employee, or agent making a disclosure of information pursuant to this section shall not be liable to the customer under the laws and rules of the State of North Carolina or any political subdivision of the State for disclosure or for failure to notify the customer of the disclosure."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 577

Short Title: Insurance Premium Financing. (Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING INSURANCE PREMIUM FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-35-30(a) reads as rewritten:

"(a) The licensee shall keep and use in his business ~~such~~ any books, accounts, and records ~~as~~ that will enable the Commissioner to determine whether ~~such~~ the licensee is complying with the provisions of this Article and with the rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in a card system, if any, for at least three years after making the final entry in respect to any insurance premium finance agreement recorded therein; provided, however, the preservation of photographic reproductions thereof or records in ~~photographic~~ photographic, imaging, microfilm, or microfiche form shall constitute compliance with this ~~requirement.~~ requirement by any licensee. The Commissioner may require of licensees under oath and in the form prescribed by him regular or special reports as he may deem necessary to the proper supervision of licensees under this Article."

Section 2. G.S. 58-35-50 reads as rewritten:

"**§ 58-35-50. Form, contents and execution of insurance premium finance agreements.**

(a) An insurance premium finance agreement shall be in writing, dated, signed by the insured, and the printed portion thereof shall be ~~in at least eight point type.~~ in type that is legible, as determined by rule. It shall contain the entire agreement of the parties with respect to the insurance contract, the premiums for which are advanced or to be advanced under it, and:

(1) At its top, the words 'INSURANCE PREMIUM FINANCE AGREEMENT' or similar wording in at least 10 point bold type; and the insurance premium finance company license number shall also appear, and:

(2) A notice in at least eight point bold type, reading as follows: 'NOTICE':

a. Do not sign this agreement before you read it.

b. You are entitled to a copy of this agreement.

c. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge.

(b) An insurance premium finance agreement shall:

(1) Contain the following:

a. The name and place of business of the insurance agent or broker negotiating the related insurance ~~contract,~~ contract;

b. The ~~the~~ name of the insured and either the ~~residence or~~ residence, the place of ~~business~~ business, or any other mailing address of the insured as specified by ~~him,~~ the insured;

c. The ~~the~~ name and place of business of the insurance premium finance company to which installments or other payments are to be ~~made,~~ made;

d. A brief ~~a~~ description of the insurance ~~contract,~~ contract;

e. The ~~the~~ premiums for which are advanced or to be advanced under the ~~agreement,~~ agreement; and

f. The ~~the~~ amount of the premiums for such insurance contract; and

(2) Set forth the following ~~items:~~ items where applicable:

a. The total amount of the premiums;

b. The amount of the down payment;

c. The principal balance, which is the difference between items a and b;

d. The amount of the service charge;

e. The balance, ~~which is the sum of items c and d,~~ payable by the insured, meaning the sum of the amounts stated under items c. and d. of this subdivision.

f. the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(c) The items set forth in subsection (d) of this section need not be stated in the sequence or order ~~set forth above, inapplicable items may be omitted;~~ in which they appear and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(d) No insurance premium finance agreement shall be signed by an insured when it contains any blank space to be filled in after it has been signed; however, if the insurance contract, the premiums for which are advanced or to be advanced under the agreement, has not been issued at the time of its signature by the insured and it so provides, the name of the authorized insurer by whom such insurance contract is issued and the policy number and the due date of the first installment may be left blank and later inserted in the original of the agreement after it has been signed by the insured."

Section 3. G.S. 58-35-55(d) reads as rewritten:

"(d) The provisions of subsection (c) of this section apply if the premiums under only one insurance contract are advanced or are to be advanced under an insurance premium finance ~~agreement;~~ agreement. If ~~if~~ premiums under more than one insurance contract are advanced or are to be advanced under an insurance premium finance agreement, the service charge shall be computed from the earlier of (i) the date that the premium is advanced in behalf of the insured, (ii) the inception date of ~~such~~ the insurance contracts, or ~~from~~ (iii) the due date of ~~such premiums; however, not more than~~ the premiums. Only one minimum service charge shall apply to each insurance premium finance agreement."

Section 4. G.S. 58-35-65 reads as rewritten:

"**§ 58-35-65. Delivery of copy of insurance premium finance agreement to insured.**

Before the due date of the first installment payable under an insurance premium finance agreement, the insurance premium finance company holding the agreement or the insurance agent shall ~~deliver~~ cause to be delivered to the insured, or mail to ~~him~~ the insured at ~~his~~ the insured's address as shown in the agreement, a copy of the agreement."

Section 5. G.S. 58-35-80(b) reads as rewritten:

"(b) The amount of any such refund credit shall represent at least as great proportion of the service charge, if any, as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. Where the amount of the refund credit for anticipation of payment is less than ~~one dollar ($1.00),~~ five dollars ($5.00), no refund need be made."

Section 6. G.S. 58-35-85 reads as rewritten:

"**§ 58-35-85. Procedure for cancellation of insurance contract upon default; return of unearned premiums; collection of cash surrender value.**

When an insurance premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be cancelled unless the cancellation is effectuated in accordance with the following provisions:

(1) Not less than 10 days' written notice ~~be mailed~~ is sent by personal delivery, first-class mail, electronic mail, or facsimile transmission to the last known address of the insured or insureds shown on the insurance premium finance agreement of the intent of the

insurance premium finance company to cancel his or their insurance contract or contracts unless the defaulted installment payment is received. ~~A notice~~ Notification thereof shall also be ~~sent~~ provided to the insurance agent.

(2) After expiration of the 10 day period, the insurance premium finance company shall send the insurer a request for cancellation specifying the effective date of cancellation and shall mail a copy of the request for cancellation to the insured at his last known address as shown on the insurance premium finance ~~agreement.~~ agreement and to the agent. Upon request of the insurance company, ~~The~~ the premium finance company shall ~~include~~ furnish a copy of the power of ~~attorney with the request for cancellation if the insurer has not already received a copy of the power of attorney with the application.~~ attorney to the insurance company.

(3) Upon receipt of a copy of the request for cancellation notice by the insurer, the insurance contract shall be cancelled as of the date specified in the cancellation notice with the same force and effect as if the ~~aforesaid~~ request for cancellation had been submitted by the ~~insured himself,~~ insured, without requiring the return of the insurance contract or contracts.

(4) All statutory, regulatory, and contractual restrictions providing that the insured may not cancel ~~his~~ the insurance contract unless ~~he~~ the insured first satisfies the restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, an individual, or a person designated to receive the notice for said governmental agency, insurance carrier, or individual shall apply where cancellation is effected under the provisions of this section.

(4a) If an insurer receives notification from an insurance agent or premium finance company that the initial down payment for the premium being financed has been dishonored by a financial institution or otherwise unpaid, there is not a valid contract for insurance and the policy will be voided.

(5) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall promptly return whatever gross unearned premiums are due under the ~~contract~~ contract, computed pro rata, to the insurance premium finance company effecting the cancellation for the benefit of the insured or ~~insureds.~~ insureds, no later than 30 days after the effective date of cancellation. Whenever the return premium is in excess of the amount due the insurance premium finance company by the insured under the agreement, the excess shall be remitted promptly to the order of the insured, subject to the minimum service charge provided for in this Article. In the event that a premium is subject to an audit to determine the final premium amount, the gross unearned premium

shall be calculated upon the deposit premium and the insurer shall return the gross unearned premium, computed on a pro rata basis, to the premium finance company no later than 30 days after the effective date of cancellation.

(6) The provisions of this section relating to request for cancellation by the insurance premium finance company of an insurance contract and the return by an insurer of unearned premiums to the insurance premium finance company, also apply to the surrender by the insurance premium finance company of an insurance contract providing life insurance and the payment by the insurer of the cash value of the contract to the insurance premium finance company, except that the insurer may require the surrender of the insurance contract.

(7) The insurer shall not deduct from any return premiums any amount owed to the insurer for any other indebtedness owed to the insurer by the insured.

(8) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured as soon as possible, but in no event later than 30 days of receipt of the return premium, provided that no refund shall be required if it is in an amount less than five dollars ($5.00).

(9) In the event that a balance due the premium finance company remains on the account after the cancellation of the agreement, the outstanding balance may earn interest at the rate stated in the agreement until paid in full."

Section 7. G.S. 58-35-40 reads as rewritten:

"**§ 58-35-40. Rebates and inducements prohibited; assignment of insurance premium finance agreements.**

(a) No insurance premium finance ~~company, and no employee of such a~~ company shall pay, allow, or offer to pay or allow ~~in any manner whatsoever~~ to an insurance agent ~~or any employee of an insurance agent,~~ or to any other person, ~~or as an inducement to the financing of an insurance policy with the insurance premium finance company or after any such policy has been financed,~~ and no insurance agent or other person shall accept from a company, any rebate whatsoever, either from the service charge for financing specified in the insurance premium finance agreement or ~~otherwise, or~~ otherwise. No insurance premium finance company shall pay, allow, or offer to pay or allow to an insurance agent, and no insurance agent shall accept from a company, a rebate as an inducement to the financing of an insurance policy with the company. No insurance premium finance company shall give or offer to give to an insurance agent, and no insurance agent shall accept from a company, any valuable consideration or inducement of any ~~kind~~ kind, directly or indirectly, other than an article of merchandise not exceeding one dollar ($1.00) in value which shall have thereon the advertisement of the insurance premium finance ~~company; but an~~

company. An insurance premium finance company may purchase or otherwise acquire an insurance premium finance agreement ~~provided that it conforms to this Article in all respects,~~ from another insurance premium finance company with recourse against the insurance premium finance company on such terms and conditions as may be mutually agreed upon by the parties, if the agreement complies with the requirements of this Article. ~~and such terms~~ Terms and conditions of any agreement shall be subject to the approval of the Commissioner.

(b) No filing of the assignment or notice thereof to the insured shall be necessary to the validity of the written assignment of an insurance premium finance agreement as against creditors or subsequent purchases, pledges, or encumbrancers of the assignor.

(c) As used in this section, the term 'insurance premium finance company' includes employees of the company and the term 'insurance agent' includes employees of the insurance agent. The word 'company' means an insurance premium finance company."

Section 8. This act becomes effective October 1, 1997, and applies to premium finance agreements or contracts entered into on or after that date.

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April 10, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Commerce Committee

FROM: Linwood Jones

RE: Senate Bill 577 (Insurance Premium Financing)

Senate Bill 577 makes several changes to the laws regulating insurance premium financing companies and insurance premium financing agreements.

Section 1 allows premium financing companies to use microfilm , microfiche, and imaging systems, in addition to photographic reproductions, to store records that are required to be kept on file for inspection by the Commissioner. Current law allows only the originals and photographic reproductions.

Section 2 eliminates the requirement that the text of the premium financing agreement be in 8-point type and instead allows the Commissioner of Insurance to set the type size by rule. This section also makes several technical and grammatical changes to the law that sets out the required contents of a premium financing agreement and allows the agreement to list any mailing address specified by the insured (in lieu of the insured's residence or place of business).

Section 3 provides that when the insured finances more than one insurance contract under a premium financing agreement, the service charge is computed from the earliest of the following three dates: (i) the date the premium was advanced, (ii) the inception date of the insurance contract, or (iii) the due date of the premiums. Under current law, the service charge for an agreement that finances more than one insurance contract is calculated from the earlier of (ii) or (iii).

Section 4 provides that the premium financing company or agent can have the agreement delivered to the insured before the due date of the first installment payment. Current law requires the company or agent to deliver it.

Section 5 provides that when the amount of a refund credit for anticipation of payment is less than $5.00, no refund is required to be made. Under current law, this threshold is $1.00.

Section 6 allows the premium financing company to notify the insured of cancellation of its insurance contract (assuming the premium financing company has been authorized to cancel) by mail, personal delivery, e-mail, and fax. Currently, the delivery must be by mail. The premium financing company, in its request to the insurer to cancel the insurance contract, must specify the effective date of cancellation. The insurer must cancel it effective that date. A copy of this request must also be sent to the agent. An insurance policy is considered invalid and void if the agent or premium financing company informs the insurer that the initial down payment for the premium has been dishonored.

Section 6 also requires that the return of unearned premiums from the insurer to the premium financing company when the insurance policy is canceled must be calculated on a pro rata basis and must be refunded within 30 days of the effective date of the cancellation. If the premium is subject to an audit to determine the final premium amount, the gross unearned premium will be calculated on the deposit premium. The insurer cannot offset the return premiums against other debts that the insured owes the insurer. If the return premiums credited to the insured exceed what the insured owes by $5.00 or more, the premium finance company must refund the excess to the insured as soon as possible and in any event within 30 days. An unpaid balance owed by the insured after cancellation of his or her policy earns interest at the rate specified in the agreement.

Section 7 rewrites the anti-rebate law for insurance premium financing. The current law prohibits premium financing companies and their employees from offering a rebate or any other kind of inducement to an agent, an agent's employee, or any other person as an inducement to the financing of the premium with that company. The bill restates this prohibition in a different manner.

Section 8 makes this act effective October 1, 1997, and applicable to premium finance agreements entered into on or after that date.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 10, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elaine Marshall	SOS
Eileen Ward	FCDC
Bernard Allen	SOS
Sam Johnson	Atty
Ronnie Jones	Fincl
James Andrews	NC AFL-CIO
TOC McCleos	T H 'S
Susan Buchanan	Industrial Hygienists
HANK SCHMULLING	Industrial Hygienists
Mary Carol Lewis	Ind. Hygienists
	DCHHS
Esther J. Hyde	NCDOS
Sandra Rose	Porter & Reed
Sally Cameron	NC Psychological
Larry Heckner	Household Financial Group
Ken Kinion	American General
Jeanie Dorsett	
	1st Union
	Entergy Corp
Bill Goodwin	NCBA
Anne Winner	NCBA
Alice Garland	Electricities
Chris Heagarty	Electric Co-ops.
Steve Allen	NC Med Soc.

MINUTES
SENATE COMMERCE COMMITTEE
April 15, 1977

A meeting of the Senate Commerce Committee was held in Room 1027 of the State Legislative Building at 11:00 a.m. on Tuesday, April 15, 1997. Seventeen members were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator Soles, Chairman, called the meeting to order.

The following bills were considered by the Committee:

S. B. 562, AN ACT TO INCREASE THE AMOUNT OF THE PROCESSING FEE CHARGED FOR RETURNED CHECKS.

Senator Warren, the bill sponsor, was recognized to explain the bill. He said it simply raises the fee from $20 to $30 for returned checks. The fee was raised to $20 in 1991. Senator Ballance expressed concern over the amount of the increase and offered an amendment to change the fee from $20 to $25. He moved its adoption.

Mrs. Fran Preston, representing the N. C. Retail Merchants Association, and Mrs. Cam Cover, representing the N. C. Association of Convenience Stores, spoke in support of raising the fee.

Following the discussion, Senator Ballance's amendment was adopted. (Copy attached.)

Senator Warren then moved that S.B. 562, as amended, be given a favorable report. Motion carried.

S. B. 629, AN ACT TO ASSIST THE JOHNSTON COUNTY BOARD OF EDUCATION WITH THE EXPEDITING OF PUBLIC SCHOOL FACILITIES.

Senator Wellons was recognized to explain the bill. He said it authorizes the Johnston County Board of Education to select and negotiate with separate prime contractors, rather than using competitive bidding, to hire contractors to build the Unitary System Approrach (USA) model school system.

Mr. Ray DeBruhl, President of Public Facilities Group, and consultant to the Johnston County Board of Education, assisted in answering questions from the Committee.

Senator Larry Shaw moved that Senate Bill 629 be given a favorable report. Mr. Dave Simpson, representing Carolinas AGC which consists of 3,400 contractors, asked the Committee to give consideration to the benefit of the open competitive low-bid system. Mr. Henry Jones, also representing the construction trade, said he believed the competitive bid system establishes the price in construction.

A vote was taken on the bill, and it failed 8 to 7.

S. B. 777, AN ACT TO ALLOW LICENSES TO ADJUST CERTAIN INTEREST RATES AND LOAN CEILINGS, TO COLLECT ATTORNEY FEES AND COURT COSTS IN THE CASE OF DEFAULT, AND TO MAINTAIN RECORDS IN THE FORM OF OPTICAL IMAGING.

Senator Lee, the bill sponsor, moved that S. B. 777 be assigned to a subcommittee and that Chairman Soles name the members of the subcommittee before the end of the day. Motion carried. The following subcommittee was appointed:

Senator Warren, Chairman
Senator Ballance
Senator Cochrane
Senator Forrester
Senator Plyler
Senator Rand.

S. B. 550, AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES.

Senator Albertson, the bill sponsor, said the bill provides that two types of activities are exempt from regulation as "engineering" under the engineers' practice act (Chapter 89C). They are (1) The planning or design of best management practices on agricultural lands by employees of the Natural Resources Conservation Service is exempt from regulation as engineering; and (2) The design of land application irrigation systems for an animal waste management plan that is required under G. S. 143-215.10C if the person has at least 3 years relevant experience in soil science and basic hydraulics and is thereby designated as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission. (See attached memorandum for additional information.)

Senator Cochrane moved that S. B. 550 be given a favorable report. Motion carried.

S. B. 568, AN ACT TO ESTABLISH A BILL OF RIGHTS FOR OWNERS OF MANUFACTURED HOMES.

Since the bill sponsor was not present due to a conflict of committee meetings, the Chairman asked Committee Counsel, Linwood Jones, to explain the bill. (See attached memorandum.) Mr. Jones said the bill establishes a "bill of rights" for tennants who lease space for their manufactured homes in mobile home parks. (See memorandum for list of these rights.)

Senator Kerr moved that S. B. 568 be given a favorable report. Motion carried.

There being no further business, the meeting adjourned at 11:45 a.m.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, April 15, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **550** Irrigation Syst. Design Not Engineering.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

S.B. **562** Increase Fees for Returned Checks.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 562

Short Title: Increase Fees for Returned Checks. (Public)

Sponsors: Senators Warren, Cooper; and Martin of Pitt.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT OF THE PROCESSING FEE CHARGED FOR RETURNED CHECKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-3-506 reads as rewritten:

"**§ 25-3-506. Collection of processing fee for returned checks.**

A person who accepts a check in payment for goods or services may charge and collect a processing fee, not to exceed ~~twenty dollars ($20.00),~~ thirty dollars ($30.00), for a check on which payment has been refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank if at the time the consumer presented the check to the person, a sign:

(1) Was conspicuously posted on or in the immediate vicinity of the cash register or other place where the check is received;

(2) Was in plain view of anyone paying for goods or services by check;

(3) Was no smaller than 8 by 11 inches; and

(4) Stated the amount of the fee that would be charged for returned checks.

When the drawer sends a check by mail for payment of a debt and the check is dishonored and returned, the processing fee may be collected if the drawer was given prior written notice that a fee would be charged for returned checks. Any document that clearly and conspicuously states the amount of the fee that will be charged for returned checks and is delivered to the drawer or his agent, or is mailed first-class mail to the drawer at his last known address as part of any document requesting payment of a debt satisfies this notice requirement for that payment only.

If a collection agency collects or seeks to collect on behalf of its principal a processing fee as specified in this section in addition to the sum payable of a check, the amount of such processing fee must be separately stated on the collection notice. The collection agency shall not collect or seek to collect from the drawer any sum other than the actual amount of the returned check and the specified processing fee."

Section 2. This act becomes effective October 1, 1997, and applies to checks written on or after that date.

SHIELDS BUSINESS FORMS, RALEIGH, NC 27605

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE April 15, 1997

S. B. No. 562 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Ballance
Sen.)

1 moves to amend the bill on page 1, line 28
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the phrase "thirty dollars ($30.00)"
4 and substituting the phrase "twenty-five dollars ($25.00)"
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SIGNED Rep. Ballance
Sen. A. J. Sabo, Jr.
Adopted by the Commerce Committee

ADOPTED _____ FAILED _____ TABLED _____

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April 14, 1997

MEMORANDUM

TO: Senator R.C.Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 562 - Increase Fees for Returned Checks.**

Senate Bill 562 amends the Uniform Commercial Code to increase the fee that can be charged for checks on which payment is refused because there are insufficient funds or for which there is no account at the time the consumer presented the check. This bill increases the fee from $20 to $30. The fee can be charged by anyone who accepts a check in payment for goods or services, so long as certain notice requirements are met. The fee was last raised from $15 to $20 on October 1, 1991.

This act would become effective October 1, 1997, and apply to checks written on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 629

Short Title: Expedite Johnston School Construction. (Local)

Sponsors: Senators Wellons; Miller, and Page.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO ASSIST THE JOHNSTON COUNTY BOARD OF EDUCATION WITH THE EXPEDITING OF PUBLIC SCHOOL FACILITIES.

Whereas, Johnston County is faced with the critical need for school facilities created by an unusual growth in student population; and

Whereas, the Johnston County Board of Education and the Johnston County Board of Commissioners have jointly approved and funded a School Facilities 2000 building program; and

Whereas, the Johnston County Board of Education, faced with the critical need for school facilities, has implemented a model facilities plan using the Unitary System Approach (USA) to design school facilities that are educationally effective and economically efficient; and

Whereas, the Johnston County Board of Education has competitively bid the USA school design under the separate prime bid laws of North Carolina and has developed certain cost parameters based on this USA concept; and

Whereas, the Johnston County Board of Education desires to explore alternative approaches to expedite the construction of school facilities that could assist in meeting the critical need for school facilities; and

Whereas, the General Assembly reaffirms its commitment to enhance public education and to encourage innovation by public officials in meeting the critical need for school facilities; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Article 8 of Chapter 143 of the General Statutes, the Johnston County Board of Education may select and

negotiate with separate prime contractors to build the Unitary System Approach (USA) model school plan if the Johnston County Board of Education determines that using the selection and negotiations processes instead of competitive bidding will expedite the project, create an effective construction team, and control costs, quality, and schedule.

Section 2. This act is effective when it becomes law and shall expire on June 30, 2000.

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April 15, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 629 (Expedite Johnston County School Construction)

Senate Bill 629 authorizes the Johnston County Board of Education to select and negotiate with separate prime contractors, rather than using competitive bidding, to hire contractors to build the Unitary System Approach (USA) model school system. The preamble to the bill states that the Board has already competitively bid the system for the purpose of establishing cost parameters.

The bill becomes effective when it becomes law and expires June 30, 2000.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 777

Short Title: Adjust Interest Rates and Loan Ceilings. (Public)

Sponsors: Senator Lee.

Referred to: Commerce.

April 9, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW LICENSEES TO ADJUST CERTAIN INTEREST RATES AND LOAN CEILINGS, TO COLLECT ATTORNEY FEES AND COURT COSTS IN THE CASE OF DEFAULT, AND TO MAINTAIN RECORDS IN THE FORM OF OPTICAL IMAGING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-166(a) reads as rewritten:

"(a) Scope. -- No person shall engage in the business of lending in amounts of ~~ten thousand dollars ($10,000)~~ twenty-five thousand dollars ($25,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word 'lending' as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans."

Section 2. G.S. 53-176 reads as rewritten:

"**§ 53-176. Optional rates, maturities and amounts.**

In lieu of making loans in the amount and at the charges stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in installments not exceeding ~~ten thousand dollars ($10,000)~~ twenty-five thousand dollars ($25,000) and which shall not be repayable in less than six months or more than 84 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments

and to charge and collect interest in connection ~~therewith which shall not exceed the following actuarial rates:~~

~~(1) With respect to a loan not exceeding seven thousand five hundred dollars ($7,500), thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding one thousand dollars ($1,000) and eighteen percent (18%) per annum on the remainder of the unpaid principal balance.~~

therewith. On the part of the unpaid balance not exceeding five thousand dollars ($5,000), interest shall not exceed the actuarial rate of twenty-nine percent (29%) per annum. On the remainder of the unpaid balance, interest shall not exceed the actuarial rate of eighteen percent (18%) per annum. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

~~(2) With respect to a loan exceeding seven thousand five hundred dollars ($7,500), eighteen percent (18%) per annum on the outstanding principal balance.~~

In addition to the interest permitted in this section, a licensee may assess at closing a reasonable credit investigation charge as agreed upon by the parties, not to exceed the actual cost of the credit investigation; provided that such charges may not be assessed more than twice in any 12-month period. The Commissioner of Banks may review charges assessed pursuant to this section and may adopt appropriate rules in accordance with G.S. 53-185.

The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section.

Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and on date of such notification begin making loans regulated by this section for the following 12 months. Annually after such election a licensee may elect to make loans in accordance with this section unless the licensee notifies in writing the Commissioner of its intention to terminate such election.

The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty.

No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all ~~of his or their~~ offices and locations in this State."

Section 3. G.S. 53-180(e) reads as rewritten:

"(e) Limitation on Attorney's Fees. -- With respect to a loan made pursuant to the provisions of G.S. 53-173, the agreement may not provide for payment by the borrower of attorney ~~fees.~~ fees, except court and collection costs in the case of default by the borrower."

Section 4. G.S. 53-182(b) reads as rewritten:

"(b) Upon payment of any loan in full, a licensee shall cancel and return to the borrower, within a reasonable length of time, originals or copies of any note, assignment, mortgage, deed of trust, or other instrument securing ~~such~~ the loan, which no longer secures any indebtedness of the borrower to the licensee."

Section 5. G.S. 53-184(a) reads as rewritten:

"(a) Each licensee shall maintain all books and records relating to loans made under this Article required by the Commissioner of Banks to be kept, and the Commissioner, ~~his~~ the Commissioner's deputy, or duly authorized examiner or agent or employee is authorized and empowered to examine ~~such~~ the records at any reasonable time. ~~Such books~~ Books and records may be maintained in the form of magnetic tape, magnetic ~~disk~~ disk, optical image disk, or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner of Banks; provided, however, that ~~such~~ the books and records so kept must be convertible into clearly legible tangible documents within a reasonable time. Any licensee having more than one licensed office may maintain ~~such~~ the required books and records at a location other than the licensed office location if ~~such~~ the location is approved by the Commissioner; provided that, ~~upon such requirements as may be imposed by the Commissioner of Banks,~~ the Commissioner of Banks may require that there shall be available to the borrower at each licensed location or such other location convenient to the borrower, as designated by the licensee, complete loan information; and provided further that ~~such~~ the books and records of each licensed office shall be clearly segregated. When a licensee maintains its books and records outside of North Carolina, the licensee shall make them available for examination at the place where they are maintained and shall pay for all reasonable and necessary expenses incurred by the Commissioner in conducting such examination. Where the data processing for any licensee is performed by a person other than the licensee, the licensee shall provide to the Commissioner of Banks a copy of a binding agreement between the licensee and the data processor which allows the Commissioner of Banks, ~~his~~ the Commissioner's deputy, or duly authorized examiner or agent or employee to examine that particular data processor's activities pertaining to the licensee to the same extent as if such services were being performed by the licensee on its own premises; and, notwithstanding the provisions of G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all costs and expenses incurred by ~~him~~ the Commissioner in ~~such~~ the examination."

Section 6. This act becomes effective October 1, 1997, and applies to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 550*

Short Title: Irrigation Syst. Design Not Engineering. (Public)

Sponsors: Senators Albertson; Cooper, Kerr, Martin of Pitt, Perdue, Plyler, Warren, and Wellons.

Referred to: Commerce.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND CHAPTER 89C OF THE GENERAL STATUTES TO PROVIDE THAT THE DESIGN OF LAND APPLICATION IRRIGATION SYSTEMS FOR ANIMAL WASTE MANAGEMENT SYSTEMS MAY BE PERFORMED BY IRRIGATION DESIGN TECHNICAL SPECIALISTS AND CONCERNING AGRICULTURAL BEST MANAGEMENT PRACTICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

(1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or ~~trade; or~~ trade.

(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that such person is legally qualified by registration to practice the said profession in his own state or country, in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny registration; provided, however, such person shall have filed an application for registration as a professional engineer or registered land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that such a person is legally qualified by registration to practice professional engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary ~~permit; or~~ permit.

(4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or registered land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident registered land surveyor provided for in subdivisions (2) and (3) of this section, provided that said work as an employee may not include responsible charge of design or ~~supervision; or~~ supervision.

(5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or registered land surveyor registered under the provisions of this Chapter; provided, the nonresident is qualified for such professional service in his own state or ~~country; or~~ country.

(6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for said government on government-owned works and projects; or practice by employees of the Natural Resources Conservation Service which involves the planning or designing of best management practices on agricultural lands.

(7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-

premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision thereof, or any municipality therein including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision thereof, or municipal corporation therein; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a registered professional engineer, or in accordance with standards prepared or approved by a registered professional engineer.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of such corporations provided that such work is in connection with, or incidental to products of, or nonengineering services rendered by such corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation.

(10) The design of land application irrigation systems for an animal waste management plan, required by G.S. 143-215.10C, by a designer who exhibits, by at least three years of relevant experience, proficiency in soil science and basic hydraulics, and who is thereby listed as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission."

Section 2. This act is retroactively effective March 1, 1997.

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April 15, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: SB 550 (Irrigation System Design Not Engineering)

Senate Bill 550 provides that the following two types of activities are exempt from regulation as "engineering" under the engineers' practice act (Chapter 89C):

(1) The planning or design of best management practices on agricultural lands by employees of the Natural Resources Conservation Service is exempt from regulation as engineering.

(2) The design of land application irrigation systems for an animal waste management plan that is required under G.S. 143-215.10C if the person has at least 3 years relevant experience in soil science and basic hydraulics and is thereby designated as an Irrigation Design Technical Specialist by the North Carolina Soil and Water Conservation Commission.

An animal waste management plan under G.S. 143-215.10C is a system designed to collect, treat, store, or *land apply* waste from animal operations.

This bill is retroactively effective to March 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 568

Short Title: Mfg. Home Owners' Bill of Rights. (Public)

Sponsors: Senator Jenkins.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A BILL OF RIGHTS FOR OWNERS OF MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding the following new Chapter to read:

"Chapter 42A.

"Manufactured Home Owners' Bill of Rights.

"§ 42A-1. Definitions.

The following definitions shall apply in this Chapter:

(1) Manufactured home. -- A structure, transportable in one or more sections, that is, when in the traveling mode, eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(2) Operator. -- The owner or manager of a manufactured home park who leases space for money or other consideration for the location of manufactured homes.

(3) Park. -- A site where space is leased to tenants for the location of their manufactured homes.

(4) Tenant. -- A person who leases space from an operator for the location of the person's manufactured home.

"**§ 42A-2. Disclosure; terms.**

(a) All services included in the rental fee for a space in a park shall be clearly defined, including water and sewer, garbage removal, lawn maintenance, and use of any clubhouse or pool.

(b) Every operator shall provide tenants with a list of the park's rules. Tenants shall be given at least 60 days' written notice of any changes in the rules unless the changes are required by State or local law, in which case no notice is required.

"**§ 42A-3. Sales of manufactured homes.**

(a) The owner of a manufactured home has the exclusive right to sell the home. An operator shall not receive a fee or commission on the sale of the home unless the owner and the operator have agreed, in writing, to such an arrangement prior to the sale of the home.

(b) An operator may not place unreasonable or discriminatory restrictions on the placement of 'for sale' signs or upon access to the park by prospective purchasers or realtors, or otherwise interfere with the efforts of owners to sell their manufactured homes. The operator may enact rules regulating the size, placement, and character of 'for sale' signs in the park.

"**§ 42A-4. Change in use of land.**

An operator may terminate a rental agreement in order to change the use of the land in the park. The operator shall provide each tenant with at least 90 days' written notice prior to any change in use.

"**§ 42A-5. Retaliatory conduct.**

The provisions of Article 4A of Chapter 42 of the General Statutes shall apply to tenants in parks."

Section 2. This act becomes effective January 1, 1998, and applies to all rental agreements entered into or renewed on or after that date.

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April 15, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: SB 568 (Manufactured Home Owners' Bill of Rights)

Senate Bill 568 establishes a "bill of rights" for tenants who lease space for their manufactured homes in mobile home parks. These rights are as follows:

(1) The owner of the mobile home park must clearly define what services are included in the rental fee (including water and sewer, garbage disposal, and lawn maintenance, and clubhouse or pool use, if applicable).

(2) The owner must give the tenant a list of the park rules. These rules can be changed only with 60 days written notice to the tenants.

(3) The tenant has the exclusive right to sell the manufactured home that he or she owns. The mobile home park owner cannot charge the tenant a commission when the home is sold unless the owner and tenant have agreed in advance in writing to the commission.

(4) The owner cannot unreasonably interfere with the tenant's attempts to sell his or her home (such as prohibiting "for sale" signs or prohibiting access to the park by prospective purchasors). The owner can regulate the size, placement, and character of "for sale" signs in his park.

(5) The owner can terminate a rental agreement in order to change the use of the land in the park, but only with written notice to each tenant 90 days prior to the change in use.

(6) The retaliatory eviction defense (which allows the tenant, if evicted, to offer proof that the eviction was prompted by his request for repairs, complaint to a government agency, etc.) is

available to mobile home park tenants who are evicted. (Note: The retaliatory eviction law in Article 4A of Chapter 42 also sets out several grounds on which the landlord can prevail despite a claim of retaliatory eviction (such as when the tenant has failed to pay rent).

This bill would take effect January 1, 1998 and would apply to rental agreements entered into on or after that date.

VISITOR REGISTRATION SHEET

Commerce Committee — April 15, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
George Stephanopolis	ABC, Wash DC
Roger Bone	Bowe + Assoc / NCPC
Charlie Diehl	NC Outdoor Adv. Assoc.
Mike Lewandowski	NC Division of Water Quality
A W Turner Jr	Public Staff - Utilities Comm
David Simmons	Zeb Alley, PA
[illegible]	[illegible]
Harold H Webb	Lobbyist
Carlton Myrick	State Construction Office
[illegible]	NC Assoc of REALTORS
George Everett	MCIC
Alice Garland	Electricities
[illegible]	[illegible]
Rob Schofield	NCUCDC
[illegible]	Wake Dept. Services
[illegible]	DENR
Cam Cedes	NCACS
[illegible]	NCDMA
[illegible]	[illegible]
[illegible]	CPL
[illegible]	PPNA
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Commerce Committee — April 15, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Willie Riddick	DOT
Suzanne Winn	Bode Assoc.
Kent Williams	Gov's office
Andy Ellen	NC Farm Bureau
Bill Wilson	NCMBA
Otis Carter	Carter & Assoc.
Brenda Summers	NC Equity
Laura Hartsell	MCIC
Phil Lehman	NC AGO
Jordan & Susan	
William & Louise Butler	Soil Cons Supervisor
Stuart Dixon	NCNB

MINUTES
SENATE COMMERCE COMMITTEE
April 17, 1997

A meeting of the Commerce Committee was held on April 17, 1997 at 8 o'clock a.m. in Room 1027 of the Legislative Building. Twenty members were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Sen. R. C. Soles, Jr., Chairman, called the meeting to order.

SB 629 - AN ACT TO ASSIST THE JOHNSTON COUNTY BOARD OF EDUCATION WITH THE EXPEDITING OF PUBLIC SCHOOL FACILITIES.

Sen. Kerr made a motion to reconsider the vote taken at our last meeting. A proposed committee substitute was sent forth and Sen. Kerr moved that it be adopted and that it be given a favorable report, motion carried.

SB 814 - AN ACT TO PROVIDE FOR IN-STAND SALES OF ALCOHOLIC BEVERAGES IN CERTAIN STADIUMS, BALLPARKS, AND SIMILAR PUBLIC PLACES.

Sen. Odom, sponsor, explained this bill to the committee. Sen. Hoyle moved to give the bill a favorable report, motion carried.

SB 465 - AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH FISCAL POLICIES FOR ENGINEERING AND DESIGN CONTRACTS WHICH WILL PROMOTE ENGINEERING AND DESIGN QUALITY AND ENSURE MAXIMUM COMETITION AMONG COMPETING PROFESSIONAL FIRMS.

Sen. Shaw, sponsor, explained this bill to the committee. Sen. Ballantine moved to give the bill a favorable report, motion carried.

SB 837 - AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS TO SPORTS CLUBS.

Sen. Ballance, sponsor, explained this bill to the committee. Sen. Ballance made a motion to give the bill a favorable. The motion carried.

SB 838 - AN ACT TO ESTABLISH TOURISM RESORTS AND TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS TO THESE ENTITIES.

Sen. Ballance, sponsor, explained this bill to the committee.

Mr. John Henderson, Christian Action League of North Carolina, spoke in opposition to this bill.

Mr. Jerry Williams, North Carolina Restaurant Association, made a few comments in favor of the bill.

Sen. Ballance made a motion to give the bill a favorable report, motion carried.

SB 382 - AN ACT REDEFINING THE BASE PERIOD FOR UNEMPLOYMENT BENEFITS AND ELIMINATING THE ONE AND ONE-HALF TIMES TEST.

Sen. Winner, explained this bill to the committee. Sen. Dalton reported that the sub-committee voted for the proposed committee substitute. Sen. Dalton made a motion to adopt the proposed committee substitute, motion carried. Sen. Dalton moved to give the proposed committee substitute a favorable report, motion carried.

SB 801 - AN ACT TO ESTABLISH THE NORTH CAROLINA PLANNED COMMUNITY ACT.

Sen. Wellons, sponsor, explained this bill to the committee.

Mr. Mike Carpenter, North Carolina Home Builders Association told the committee that they did have some problems with the bill, but hope that it would pass the Senate in order that the House would be able to work on this bill next session.
Sen. Hartsell moved to give the bill a favorable report, motion carried.

SB 539 - AN ACT TO REQURIE MORE SPECIFIC DISCLOSURE OF LOBBYING.

Sen. Miller, sponsor, explained this bill to the committee. Sen. Hoyle sent forth an amendment and moved that it be adopted, motion carried. Sen. Hoyle sent forth Amendment #2 and moved that it be adopted, motion carried. Sen. Warren moved to give the bill as amended a favorable report and that it be incorporated into a committee substitute. Division was called and the vote was 8 to 7 in favor of the proposed committee substitute.

There being no further business, meeting adjourned.

Sen. R. C. Soles, Jr. Chairman Janet Blalock, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
SEN. R. C. SOLES, JR., Chairman

Thursday, April 17, 1997

SEN. R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **SB 465** NCDOT Engineering/Design Contracts
Sequential Referral: none
Recommended Referral: none

S.B. **SB 801** N.C. Planned Community Act
Sequential Referral: none
Recommended Referral: none

TOTAL REPORTED: 2

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 629
Proposed Committee Substitute
S629-CSRN-001

Short Title: Expedite Johnston School Construction. (Local)

Sponsors:

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO ASSIST THE JOHNSTON COUNTY BOARD OF EDUCATION WITH THE EXPEDITING OF PUBLIC SCHOOL FACILITIES.

Whereas, Johnston County is faced with the critical need for school facilities created by an unusual growth in student population; and

Whereas, the Johnston County Board of Education and the Johnston County Board of Commissioners have jointly approved and funded a School Facilities 2000 building program; and

Whereas, the Johnston County Board of Education, faced with the critical need for school facilities, has implemented a model facilities plan using the Unitary System Approach (USA) to design school facilities that are educationally effective and economically efficient; and

Whereas, the Johnston County Board of Education has competitively bid the USA school design under the separate prime bid laws of North Carolina and has developed certain cost parameters based on this USA concept; and

Whereas, the Johnston County Board of Education desires to explore alternative approaches to expedite the construction of school facilities that could assist in meeting the critical need for school facilities; and

Whereas, the General Assembly reaffirms its commitment to enhance public education and to encourage innovation by public officials in meeting the critical need for school facilities; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Article 8 of Chapter 143 of the General Statutes, the Johnston County Board of Education may select and negotiate with separate prime contractors to build the Unitary System Approach (USA) model school plan if the Johnston County Board of Education determines that using the selection and negotiations processes instead of competitive bidding will expedite the project, create an effective construction team, and control costs, quality, and schedule.

Section 2. This act shall apply to the construction of an elementary school at McGee's Crossroads, an elementary school school in Benson, and an elementary/middle school in West Johnston County. The Johnston County Board of Education shall report to the General Assembly the net price per square foot for each project.

Section 3. This act is effective when it becomes law and shall expire on June 30, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 629
Proposed Committee Substitute S629-PCS2721

Short Title: Expedite Johnston School Construction. (Local)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO ASSIST THE JOHNSTON COUNTY BOARD OF EDUCATION WITH THE EXPEDITING OF PUBLIC SCHOOL FACILITIES.

Whereas, Johnston County is faced with the critical need for school facilities created by an unusual growth in student population; and

Whereas, the Johnston County Board of Education and the Johnston County Board of Commissioners have jointly approved and funded a School Facilities 2000 building program; and

Whereas, the Johnston County Board of Education, faced with the critical need for school facilities, has implemented a model facilities plan using the Unitary System Approach (USA) to design school facilities that are educationally effective and economically efficient; and

Whereas, the Johnston County Board of Education has competitively bid the USA school design under the separate prime bid laws of North Carolina and has developed certain cost parameters based on this USA concept; and

Whereas, the Johnston County Board of Education desires to explore alternative approaches to expedite the construction of school facilities that could assist in meeting the critical need for school facilities; and

Whereas, the General Assembly reaffirms its commitment to enhance public education and to encourage innovation by public officials in meeting the critical need for school facilities; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Article 8 of Chapter 143 of the General Statutes, the Johnston County Board of Education may select and negotiate with separate prime contractors to build the Unitary System Approach (USA) model school plan if the Johnston County Board of Education determines that using the selection and negotiations processes instead of competitive bidding will expedite the project, create an effective construction team, and control costs, quality, and schedule.

Section 2. This act shall apply to the construction of an elementary school at McGee's Crossroads, an elementary school in Benson, and an elementary/middle school in West Johnston County. The Johnston County Board of Education shall report to the General Assembly the net price per square foot for each project at the completion of each project.

Section 3. This act is effective when it becomes law and shall expire on June 30, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 814

Short Title: In-Stand ABC Sales. (Public)

Sponsors: Senators Odom; Dannelly, Rucho, and Winner.

Referred to: Commerce.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR IN-STAND SALES OF ALCOHOLIC BEVERAGES IN CERTAIN STADIUMS, BALLPARKS, AND SIMILAR PUBLIC PLACES.

The General Assembly of North Carolina enacts:

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

"**§ 18B-1009. In-stand sales.**

Nothing in this Chapter shall be construed to prohibit a retail permittee from selling for consumption, malt beverages in the seating areas of stadiums, ballparks, and other similar public places with a seating capacity of 60,000 or more during professional sporting events, in municipalities with a population greater than 450,000, provided that:

(1) The seating areas are designated as part of the retail permittee's licensed premises;

(2) The retail permittee has notified the Commission, in writing, of its intent to sell malt beverages in the seating areas at sporting events;

(3) Service of food and nonalcoholic beverages is available in the seating areas; and

(4) The retail permittee has trained its employees:

a. To identify underage persons and intoxicated persons; and

b. To refuse to sell malt beverages to those persons as required by G.S. 18B-305."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 465

Short Title: NCDOT Engineering/Design Contracts. (Public)

Sponsors: Senator Shaw of Cumberland.

Referred to: Commerce.

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH FISCAL POLICIES FOR ENGINEERING AND DESIGN CONTRACTS WHICH WILL PROMOTE ENGINEERING AND DESIGN QUALITY AND ENSURE MAXIMUM COMPETITION AMONG COMPETING PROFESSIONAL FIRMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-28.1(f) reads as rewritten:

"(f) ~~The~~ Notwithstanding any other provision of law, the Department of Transportation ~~is required to~~ may solicit proposals under rules and regulations ~~published~~ adopted by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with highway construction, maintenance, or ~~repair that are over ten thousand dollars ($10,000).~~ repair. In order to promote engineering and design quality and ensure maximum competition by professional firms of all sizes, the Department may establish fiscal guidelines and limitations necessary to promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to reject any and all proposals is reserved to the Board of ~~Transportation, but the Board of Transportation may consult with the Advisory Budget Commission before awarding any such contract.~~ Transportation."

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

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April 16, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Various Bills

Senate Bill 465 (DOT Engineering/Design Contracts

Senate Bill 465 allows the Department to solicit proposals for professional engineering services and other kinds of professional services relating to highway construction and maintenance in accordance with Departmental rules. Current law requires the Department to use these rules on contracts over $10,000. The bill also authorizes DOT to establish fiscal guidelines and limitations to promote cost efficiency in overhead, salary, and expense reimbursement rates.

Senate Bill 837 authorizes the ABC Commission to issue permits to sports clubs. The list already includes seven other types of permits that the ABC Commission can issue without approval at an election (see the list in the bill).

Senate Bill 838 (Tourism Resort ABC Permits)

Senate Bill 838 authorizes the ABC Commissioner to issue permits to qualified establishments at tourist resorts as follows: on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverage permits. A "tourist resort" is a restaurant and lodging facility that is operated as a resort. The resort must offer meeting facilities and have golf or tennis facilities and other recreational facilities in order to qualify.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Senate Bill 814 (In Stand ABC Sales)

Senate Bill 814 allows a retail permittee under the ABC laws to sell malt beverages in the stands of a ballpark or stadium or other public place with a seating capacity of 60,000 or more in a city with a population of 450,000 or more if the following conditions are met:

(1) The seating areas are designated as part of the permittee's licensed premises
(2) The permittee has notified the ABC Commission that it will sell malt beverages in the stands
(3) Food and nonalcoholic beverages are also available in the seating areas
(4) The permittee has trained its employees to identify intoxicated and underage persons.

Senate Bill 575 (MV Dealers/Manufacturers Licensing Law)

Senate Bill 575 makes several changes to the motor vehicle dealer franchise laws.

Section 1 requires franchise agreements and forms to be consistent with State laws and requires the manufacturer or distributor to certify that it in fact is in compliance with our laws and rules. Revisions to the franchise and the reasons for those revisions must be filed with the Commissioner of Motor Vehicles within 60 days.

Section 2 requires the Commissioner to investigate any complaint alleging a violation of the franchise laws and provides the mechanism by which a dealer can file a complaint against the manufacturer or distributor and have a hearing on the complaint.

Section 3 gives the Commissioner flexibility in the time he has to render a decision in a hearing that is held to determine whether a new dealer can enter an existing dealer's market area. Current law requires a decision within 180 days of the time the existing dealer filed the protest. The bill provides that the Commissioner must attempt to render a decision within 180 days. In addition, a provision is added to subject satellite dealerships (where either new cars or sold or manufacturer's warranty work is performed) to the same market entry requirements as new dealerships. A 180-day decision period for cancellation of a motor vehicle franchise is also changed to require that the Commissioner attempt to render a decision within 180 days. The manufacturer or distributor is also prohibited, through a right of first refusal or otherwise, from preventing the dealer from transferring the franchise to the dealer's designee.

The bill also prohibits the manufacturer or distributor from (a) requiring the dealer to issue ownership interests in the dealership to a general manager or other persons involved in the dealership, (b) varying the price charged dealers in this State for new

motor vehicles because of he dealer's purchase of equipment or other merchandise, the dealer's relocating or remodeling of existing facilities, (c) the dealer's participation in training sponsored by the manufacturer, or (d) the dealer's achievement of specified levels of customer satisfaction. The manufacturer or distributor must offer the entire line of new vehicles to its North Carolina dealers at the lowest prices they are offered to its dealers in other states. In addition, the manufacturer or distributor cannot require the dealer to compensate the manufacturer or distributor for legal fees incurred when a dealer asserts its rights under the motor vehicle franchise law, nor can it require the dealer to pay an additional fee, purchase ad displays, or remodel its facilities to receive any model or series of vehicles. The bill also provides for a stay of certain payments or charges by the dealer to the manufacturer while administrative proceedings involving manufacturer or distributor warranties are pending.

Senate Bill 646 (Official State Dance)

This bill designates the square dance as the American folk dance for North Carolina.

Senate Bill 382 - Proposed Committee Substitute (Unemployment Base Period)

Senate Bill 382 redefines the "base period" that a person must have worked before being eligible for unemployment benefits and eliminates one of the other tests ("the one and one-half times test") to determine eligibility. Currently, a person's base period is the first four of the last five completed calendar quarters prior to the filing of the claim for unemployment benefits. A person must have earned wages during that base period at least six times greater than the average weekly insured wage. Senate Bill 382 provides that if the person did not earn enough wages during the first four of the last five months to qualify for unemployment benefits, he or she can instead use the last four calendar quarters as a base period.

Current law also requires that the person's base period wages must be at least one and one-half times his high quarter wages and that these high quarter wages must be at least one and one-half times the average weekly insured wage. Senate Bill 382 eliminates this requirement. The "six times" test referred to above is not eliminated.

The proposed committee substitute sunsets this act in September, 2001. The Employment Security Commission will study the effects of this act and report back to the General Assembly by January 1, 2001 on its effect.

SENATE BILL 801 (Planned Community Act)

Summary is from the Instuitute of Government

Enacts new "North Carolina Planned Community Act." Defines a "planned community" as real estate with respect to which a person, by virtue of owning a lot, is

obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain or improve other real estate described in the declaration. Provides that neither a cooperative nor a condominium is a planned community, but that the land in either may be part of a planned community. Allows creation of a leasehold planned community where lot leases are at least 20 years in length, including renewal options. Applies to planned communities created in this state after Oct. 1, 1997, except those with fewer than 12 lots or those that are restricted to nonresidential purposes, unless the declaration provides otherwise. Also provides that certain sections of act apply to planned communities with more than 12 lots created before Oct. 1, 1997. States that provisions of bill may not be varied by the declaration or bylaws or by agreement, but that, after a breach of a provision in bill, rights may be knowingly waived in writing.

Creation, alteration and termination of planned communities. Requires declaration creating community to be executed as a deed and recorded in name of community in grantee index of register of deeds. Defines required contents of declaration. Provides for the expiration or termination of a lease that may terminate the community or reduce its size. Provides for the allocation of limited common elements to particular lots. Establishes requirements for plat that is part of the declaration. Provides for the expansion of the community and the conversion or reduction of lots. Provides generally that declaration may be amended by lot owners to which 67% of the votes in the association are allocated or any larger majority provided in the declaration. Establishes a one-year limitation on actions to challenge validity of declaration amendments. Provides generally that the community may be terminated only with the consent of the lot owners to which 80% of the votes in the association are allocated. Includes provisions regarding the creation of, and powers that may be exercised by a master association.

Management of planned community. Includes provisions relating to the powers that may be exercised by the lot owners' association and the executive board. Provides that notwithstanding any provision in the declaration or bylaws to the contrary, the lot owners may remove a member of the executive board (other than a member appointed by the declarant) by a 67% vote of all persons present and entitled to vote at an official meeting. Also provides for the relinquishment of control over appointments to the executive board by the declarant. Provides that declarant control terminates no later than the earlier of (a) 120 days after conveyance of 75% of the lots; (b) two years after declarant ceases to offer lots; or (c) two years after any development rights to add new lots was last exercised. Also provides for transition period during which some but not all members of board are elected by lot owners. Provides for the use of proxies at association meetings. Requires the association to maintain both property and liability insurance on common elements, to the extent such insurance is reasonably available. Provides for assessing lot owners for common expenses and establishes a lien against a lot for which an assessment levied against it remains unpaid for a period of at least 30 days, if a claim of lien is filed of record in the office of the clerk of superior court. Provides that lien is extinguished if proceedings to enforce the lien are not instituted within three years after claim of lien docketed.

Protection of purchasers. Requires, as general rule, that initial seller of lot, before execution or sale of a lot, furnish purchaser with a copy of the declaration, the bylaws, the rules, and an initial sale certificate containing financial information specified in act. Requires a lot owner to provide a more abbreviated disclosure statement to purchaser if lot resold.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 837

Short Title: Sports Club ABC Permits. (Public)

Sponsors: Senator Ballance.

Referred to: Commerce.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS TO SPORTS CLUBS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-603(f) reads as rewritten:

"(f) Permits Not Dependent on Elections. -- The Commission may issue the following kinds of permits without approval at an election:

(1) Special occasion permits;
(2) Limited special occasion permits;
(3) Brown-bagging permits for private clubs and congressionally chartered veterans organizations;
(4) Culinary permits, except as restricted by subdivision (d)(5);
(5) Special one-time permits issued under G.S. 18B-1002;
(6) All permits listed in G.S. 18B-1100;
(7) On-premises malt beverage permits and on-premises unfortified wine permits for a tourism ABC ~~establishment.~~ establishment;
(8) Sports club permits."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 838

Short Title: Tourism Resort ABC Permits. (Public)

Sponsors: Senator Ballance.

Referred to: Commerce.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH TOURISM RESORTS AND TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS TO THESE ENTITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-101 is amended by adding a new subdivision to read:

"(14b) 'Tourism resort' means any restaurant and lodging facility owned and operated as a resort property offering food, beverage, lodging, and meeting facilities to travelers and tourists and featuring one or more golf courses or featuring tennis courts along with other recreational and sporting activities."

Section 2. G.S. 18B-603(f) reads as rewritten:

"(f) Permits Not Dependent on Elections. -- The Commission may issue the following kinds of permits without approval at an election:

(1) Special occasion permits;
(2) Limited special occasion permits;
(3) Brown-bagging permits for private clubs and congressionally chartered veterans organizations;
(4) Culinary permits, except as restricted by subdivision (d)(5);
(5) Special one-time permits issued under G.S. 18B-1002;
(6) All permits listed in G.S. 18B-1100;
(7) On-premises malt beverage permits and on-premises unfortified wine permits for a tourism ABC ~~establishment.~~ establishment;

(8) On-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverage permits for qualified establishments located within a tourism resort."

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

Janet P. Blalock (Sen. Soles)

From: Tjerry@aol.com[SMTP:Tjerry@aol.com]
Sent: Wednesday, April 16, 1997 10:36 PM
To: Sen. R.C. Soles
Subject: Commerce Today @ 8 AM

Re: SB 837 & SB 838

Dear R.C.:

The above bills are scheduled for the Commerce Committee tomorrow at 8 AM and I am sorry I have not gotten by to see you to discuss them before the committee meets but since they were just introduced I didn't expect them to be taken up until next week and I have been in meetings all week.

But thank you for your consideration and I will be at the meeting. However, I am using the Internet to contact you tonight to assure you of my intersts and let you know I did want to speak with you on behalf of the travel industry before the bills actually came up. I am sorry that was not possible. I will be prepared to take your questions on them tomorrow. However, in the event you do check your mail before committee, I wanted you to have the following:

Specifically, North Carolina is a travel and tourism state but we are losing a lot of meetings and conferences to other states because so many true sports clubs and resort facilities in some areas of NC do not have mixed beverages. When that happens other retail establishments in those areas lose sales, too. NC and the county lose sales tax collections.

During the Governor's Conference on Tourism just recently held in Asheville, I spoke with representatives who sell NC travel in the United Kingdom and Germany.
I was more than surprised when both said they cannot book some areas of NC because of the lack of beer, wine and mixed beverages. They were quite emphatic.

T. Keith Mangum represents NC in Germany. He said to the German..."beer is bread"...not an alcoholic beverage. His e-mail address, if you wish to verify this is as follows: think@mangum.de ...so feel free to contact him. His Fax number is (089) 26 66 21 0 and please feel free to contact him.

Stella Clery-Ackland is Managing Director of North Carolina, UK Office: Cellet Travel Services, LTD. She said to me, " If a Brit comes to NC and cannot get a drink he will walk out of the place and never return and suggest to his friends that they not visit that region. If you tell a German who has traveled all the way to NC that he cannot get a beer he might just break the furniture!" Mangum confirmed that.

You may also contact Stella at Cellet Travel Services, Brook House, 47 High Street, Henley-In-Arden, Warwickshire B95 5AA.

Please note that as we in Travel and Tourism work to promote Regional Tourism and Heritage Tourism we are facing this serious problem. Lots of small retail businesses in those areas are also losing sales. And as you face budget matters please consider that it is our Regional Tourism and Heritage Tourism that is essential to many areas of our State.

SB 837 Sports Club ABC Permits: Most of you are aware of the Sports Club provisions and there are numerous other true sports clubs across the state that feel they should have Sports Club Permits. They tell me (as indicated above) they are losing business...travel and tourism business and are concerned. We have also heard some discussions about a challenge to the law if some of these establishments can't get the permit when others can. It is on their behalf that we asked this bill be introduced and ask for your support.

SB 838 Tourism Resort ABC Permits: Again this is on behalf of a number of large and small resorts that have told us they are losing travel & tourism business because they cannot offer mixed beverages. They too, say other retailers in their areas are losing sales. Under this provision only a true resort with lodging and a restaurant as well as meeting facilities and other sports or recreating facilities including a golf course or two or more tennis courts would be eligible for the permit. These facilities can attract meetings and conferences as well as group travelers that they sometime cannot attract because of the lack of mixed beverages.

Frankly, we believe these two bills, if enacted can be used as economic development tools.

We also see the need for North Carolina to ban brownbagging and go to state-wide mixed beverages as a matter of control and for the tax revenue. (It should also cut down on the number of bills, special bills and local bills the General Assembly must deal with each year.) Therefore, I ask you to consider a ban on brownbagging at least by January 1, 2000. Please think about it.

Thank you in advance for your consideration oon these matters.

T. Jerry Williams
NC Restaurant Association

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 382
Proposed Committee Substitute S382-PCS2722

Short Title: Redefine Unemp. Ins. Base Period. (Public)

Sponsors:

Referred to:

March 12, 1997

A BILL TO BE ENTITLED

AN ACT REDEFINING THE BASE PERIOD FOR UNEMPLOYMENT BENEFITS AND ELIMINATING THE ONE AND ONE-HALF TIMES TEST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-8(17) reads as rewritten:

"(17) a. Repealed by Session Laws 1977, c. 727, s. 33.

b. Repealed by Session Laws 1977, c. 727, s. 33.

c. As to claims filed on or after October 1, 1974, for claimants who do not have a benefit year in progress, 'benefit year' shall mean the one-year period beginning with the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits. A valid claim shall be deemed to have been filed only if such individual, at the time the claim is filed, is unemployed, and has been paid wages in his base period totaling at least five hundred sixty-five dollars and fifty cents ($565.50), and equal to at least one and one-half times his high-quarter wages, which high-quarter wages must equal at least one hundred and fifty dollars ($150.00). As to claims filed on or after August 1, 1981, for claimants who do not have a benefit year in progress, 'benefit year' shall mean the 52 week period beginning with the first day of a week with respect to which an individual first registers for work and files a valid claim

for benefits. Provided, however, if the first day of a week with respect to which an individual first registers for work and files a valid claim for benefits is either (i) the first day of a calendar quarter, or (ii) the second day of a calendar quarter followed by a February 29 within one year thereof, 'benefit year' shall mean the one-year period beginning with that first day of the week with respect to which the individual first registers for work and files a valid claim for benefits. A valid claim shall be deemed to have been filed only if such individual, at the time the claim is filed, is unemployed, and has been paid wages in his base period totaling at least six times the average weekly insured wage, obtained in accordance with ~~G.S. 96-8(22) and equal to at least one and one-half times his high-quarter wages, which high-quarter wages must equal at least one and one-half times the average weekly insured wage, obtained in accordance with G.S. 96-8(22).~~ G.S. 96-8(22), and has been paid wages in at least two quarters of the individual's base period.

d. Repealed by Session Laws, 1981, c. 160, s. 11."

Section 2. G.S. 96-8(18) reads as rewritten:

"(18) 'Base period' means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year as defined in subdivision (17) of this section. If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subdivision, 'alternative base period' means the last four completed calendar quarters."

Section 3. This act is effective when it becomes law and applies to new initial claims filed on or after September 1, 1997. The Employment Security Commission shall report to the General Assembly by January 1, 2001, on the effect of this act on unemployment compensation claims. This act expires September 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 801

Short Title: N.C. Planned Community Act. (Public)

Sponsors: Senators Wellons; Hartsell and Miller.

Referred to: Commerce.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA PLANNED COMMUNITY ACT.

The General Assembly of North Carolina enacts:

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

"Chapter 47E.

"North Carolina Planned Community Act.

"ARTICLE 1.

"General Provisions.

"**§ 47E-1-101. Short title.**

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

"**§ 47E-1-102. Applicability.**

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

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

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

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

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

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

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

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

"**§ 47E-1-103. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

limited common elements within a planned community; (iii) to subdivide lots or convert lots into common elements; or (iv) to withdraw real estate from a planned community.

(12) 'Dispose' or 'disposition' means a voluntary transfer to a purchaser of any legal or equitable interest in a lot, but does not include the transfer or release of a security interest.

(13) 'Executive board' means the body, regardless of name, designated in the declaration to act on behalf of the association.

(14) 'Identifying number' means a symbol that identifies only one lot in a planned community.

(15) 'Initial seller' means the declarant, an affiliate of the declarant or any person or entity that acquires a lot for any purpose other than to use the lot for residential purposes.

(16) 'Leasehold planned community' means a planned community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the planned community or reduce its size.

(17) 'Lessee' means the party entitled to present possession of a leased lot whether lessee, sublessee, or assignee.

(18) 'Limited common element' means a portion of the common elements allocated by the declaration or by operation of G.S. 47E-2-104(b)(2) for the exclusive use of one or more but fewer than all of the lots.

(19) 'Lot' means a physical portion of the planned community designated for separate ownership or occupancy, the boundaries of which are described pursuant to G.S. 47E-2-105(a)(3).

(20) 'Lot owner' means a declarant or other person who owns a lot, or a lessee of a lot in a leasehold planned community whose lease expires simultaneously with any lease the expiration or termination of which will remove the lot from the planned community, but does not include a person having an interest in a lot solely as security for an obligation.

(21) 'Master association' means an organization described in G.S. 47E-2-120, whether or not it is also an association described in G.S. 47E-3-101.

(22) 'Person' means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(23) 'Planned community' means real estate with respect to which any person, by virtue of his ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of this act,

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

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

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

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

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

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

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

"**§ 47E-1-104. Variation.**

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

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

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

"§ 47E-1-105: Reserved.

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

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

"§ 47E-1-107. Eminent domain.

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

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

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

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

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

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

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

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

"ARTICLE 2.

"Creation, Alteration, and Termination of Planned Communities.

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

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

"**§ 47E-2-102:** Reserved.

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

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

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

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

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

"**§ 47E-2-104. Description of lots.**

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

(b) Except as provided by the declaration:

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

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

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

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

(1) The name of the planned community and the name of the association;

(2) The name of every county in which any part of the planned community is situated;

(3) A description by reference to the plat(s) described in G.S. 47E-2-109 of the boundaries of each lot, including the lot's identifying number, and the common elements created by the declaration;

(4) A description of any real estate which is or must become common elements or limited common elements, other than those specified in G.S. 47E-2-104(b), as provided in G.S. 47E-2-109(b)(9);

(5) A description of any real estate (except real estate subject to development rights) which may be allocated subsequently as limited common elements, other than limited common elements specified in G.S. 47E-2-104(b), together with a statement that they may be so allocated;

(6) A description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, a statement of the maximum number of lots which the declarant reserves the right to create, and a time limit within which each of those rights must be exercised;

(7) If any development right may be exercised with respect to different parcels of the real estate at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(8) Any other conditions or limitations under which the rights described in subdivision (6) of this subsection may be exercised or will lapse;

(9) An allocation to each lot of the allocated interests in the manner described in G.S. 47E-2-107;

(10) Any restrictions on use, occupancy, and alienation of the lots;

(11) The recording data for recorded easements and licenses appurtenant to or included in the planned community or to which any portion of the planned community is or may become subject by virtue of a reservation in the declaration; and

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

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

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

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

(1) Where the complete lease may be inspected;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 47E-2-109. Plats.**

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

(b) Each plat shall show:

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

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

(3) The location and dimensions of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;

(4) The extent of any encroachments by or upon any portion of the planned community;

(5) The location and dimensions of all easements having specific location and dimensions and serving and burdening any portion of the planned community;

(6) The location and dimensions of any lot boundaries and that lot's identifying number;

(7) A legally sufficient description of any real estate in which the lot owners will own only an estate for years, labeled as 'leasehold real estate';

(8) The distance between noncontiguous parcels of real estate comprising the planned community; and

(9) The location and dimensions of limited common elements provided for in the declaration pursuant to G.S. 47E-2-105(a)(4) and (5) but not including parking spaces or the other limited common elements described in G.S. 47E-2-104(b).

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the planned community. Any contemplated improvement shown shall be labeled either 'MUST BE BUILT' or 'NEED NOT BE BUILT'.

(d) Upon exercising any development right, the declarant shall record new plats necessary to conform to the requirements of subsections (a), (b), and (c) of this section.

"**§ 47E-2-110. Development rights.**

(a) To exercise any development right reserved under G.S. 47E-2-105(a)(6), the declarant shall record an amendment to the declaration (G.S. 47E-2-117) and comply with G.S. 47E-2-109. The declarant is the owner of any lots thereby created. The amendment to the declaration shall assign an identifying number to each new lot created, and except in the case of subdivision or conversion of lots described in subsection (c) of this section, reallocate the allocated interests among all lots. The amendment shall describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the lots to which each is allocated to the extent required by G.S. 47E-2-108 (Limited common elements).

(b) Development rights may be reserved within any real estate added to the planned community if the amendment adding that real estate includes all matters required by, and is in compliance with, G.S. 47E-2-105 and also if the plats include all matters required by G.S. 47E-2-109. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to G.S. 47E-2-105(a)(6).

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

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

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

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

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

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

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

"§ 47E-2-111. Alterations of lots.

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

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

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

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

"§ 47E-2-112: Reserved.

"§ 47E-2-113. Subdivision of lots.

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

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

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

"**§ 47E-2-114: Reserved.**

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

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

"**§ 47E-2-116. Easement rights.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 47E-2-119: Reserved.**

"**§ 47E-2-120. Master associations.**

(a) If the declaration for a planned community provides that any of the powers described in G.S. 47E-3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation which exercises those or other powers on behalf of one or more other planned communities or for the benefit of the lot owners of one or more other planned communities, all provisions of this act applicable to lot owners' associations apply to any such corporation, except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in G.S. 47E-3-101, it may exercise the powers set forth in G.S. 47E-3-102(a)(2) only to the extent expressly permitted in the declarations of the planned communities which are part of the master association or expressly described in the delegations of power from those planned communities to the master association.

(c) If the declaration of any planned community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of lot owners with respect to the lot owners' association set forth in G.S. 47E-3-103, 47E-3-108, 47E-3-109, 47E-3-110, and 47E-3-112, apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise lot owners within the meaning of this act.

(e) Notwithstanding the provisions of G.S. 47E-3-103(f) with respect to the election of the executive board of an association by all lot owners after the period of declarant control ends, and even if a master association is also an association described in G.S. 47E-3-101, the articles of incorporation of the master association

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

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

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

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

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

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

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

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

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

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

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

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

"ARTICLE 3.

"Management of Planned Community.

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

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

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

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

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;

(3) Hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47E-3-112;

(9) Grant easements, leases, licenses, and concessions through or over the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than the limited common elements described in G.S. 47E-2-104(b) and for services provided to lot owners;

(11) Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots including those provided for in G.S. 47E-2-116(a)(i)) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;

(12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots including those provided for in G.S. 47E-2-116(a)(i)) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;

(13) Impose reasonable charges in connection with the preparation and recordation of amendments to the declaration, initial sale certificates required by G.S. 47E-4-102, resale statements required by G.S. 47E-4-109, or statements of unpaid assessments;

(14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;

(15) Assign its right to future income, including the right to receive common expense assessments;

(16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and

(17) Exercise any other powers necessary and proper for the governance and operation of the association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. On his transferor, other than:

1. Misrepresentations by any prior declarant;

2. Warranty obligations on improvements made by any previous declarant, or made before the planned community was created;
3. Breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or
4. Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs (G.S. 47E-2-115), if he is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide an initial sale certificate, and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to lots under subsection (c) of this section, may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any lot owned by the successor, or until recording an instrument permitting exercise of all of those rights, other than any right held by his transferor to control the executive board in accordance with the provisions of G.S. 47E-3-103(d) for the duration of any period of declarant control, any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under G.S. 47E-3-103(d).

"**§ 47E-3-105. Termination of contracts and leases of declarant.**

If entered into before the executive board elected by the lot owners pursuant to G.S. 47E-3-103(f) takes office, (i) any management contract, employment contract, or lease of recreational or parking areas or facilities affecting or related to the planned community, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease affecting or related to the planned community that is not bona fide or was unconscionable to the lot owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the lot owners pursuant to G.S. 47E-3-103(f) takes office upon not less than 90 days notice to the other party. Notice of the substance of the provisions of this section shall be set out in each contract entered into by or on behalf of the association before the executive board elected by the lot owners pursuant to G.S. 47E-3-103(f) takes office. Failure of the contract to contain such a provision shall not affect the rights of

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

"§ 47E-3-106. Bylaws.

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

(1) The number of members of the executive board and the titles of the officers of the association;

(2) Election by the executive board of officers of the association;

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(6) The method of amending the bylaws.

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

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

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

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

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

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

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

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

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

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

"**§ 47E-3-108. Meetings.**

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

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

"§ 47E-3-109. Quorums.

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

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

"§ 47E-3-110. Voting; proxies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 47E-3-113. Insurance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 47E-3-114. Surplus funds.**

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

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

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

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

(c) To the extent required by the declaration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 47E-3-117: Reserved.**

"**§ 47E-3-118. Association records.**

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

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

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

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

"ARTICLE 4.

"Protection of Purchasers.

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

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

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

(1) Gratuitous;
(2) Pursuant to court order;
(3) By government or governmental agency;
(4) By foreclosure or deed in lieu of foreclosure;
(5) To a person in the business of selling real estate who intends to offer the lot or lots to purchasers; or
(6) Subject to cancellation at any time for any reason by the purchasers without penalty.

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

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

(1) A statement setting forth the amount and frequency of common expense assessments, other fees or charges payable by lot owners;
(2) A statement setting forth any unpaid common expense assessments, other fees or charges currently due and payable from the initial seller;
(3) A statement of any capital expenditures anticipated by the association for the current and two next succeeding fiscal years;
(4) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;
(5) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;
(6) The current operating budget of the association; and
(7) Any services not reflected in the budget that the declarant provides, or expenses that he pays and that he expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of lot.

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

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

"**§ 47E-4-109. Resales of lots.**

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

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

"**§ 47E-4-110: Reserved.**

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

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

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

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

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

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

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

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

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

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

"**§ 47E-4-120: Reserved.**"

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 539

Short Title: Lobbyist Disclosure. (Public)

Sponsors: Senators Miller; Ballantine, Blust, Forrester, Gulley, Jenkins, Kinnaird, Lucas, Martin of Guilford, and Odom.

Referred to: Commerce.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MORE SPECIFIC DISCLOSURE OF LOBBYING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.2 reads as rewritten:

"**§ 120-47.2. Registration procedure.**

(a) A lobbyist shall file a registration statement with the Secretary of State before engaging in any lobbying. A separate registration statement is required for each lobbyist's principal.

(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; ~~and a general description of the matters on which the registrant expects to act as a lobbyist.~~ a statement of the general issue areas in which the registrant expects to engage in lobbying on behalf of each principal; and the name of every political committee of which each principal is a parent entity under the provisions of G.S. 163-278.19.

(c) Each lobbyist shall register again with the Secretary of State no later than 10 days after any change in the information supplied in his last registration under subsection (b). Each supplementary registration shall include a complete statement of the information that has changed.

(d) Within 20 days after the convening of each session of the General Assembly, the Secretary of State shall furnish each member of the General Assembly and the State Legislative Library a list of all persons who have registered as lobbyists and

whom they represent. A supplemental list shall be furnished periodically each 20 days thereafter as the session progresses.

(e) Each registration statement required under this Article shall be effective from the date of filing until January 1 of the following odd-numbered year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable."

Section 2. G.S. 120-47.6 reads as rewritten:

"**§ 120-47.6. Statements of lobbyist's lobbying expenses and lobbying activities required.**

(a) Each lobbyist shall file an expense report and a report of lobbying activities with the Secretary of State with respect to each principal within 60 days after the last day of the regular session. ~~This expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year. The lobbyist shall file both expense reports whether or not expenditures are made.~~

(b) The expense report shall include all expenditures made between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year. The lobbyist shall file both expense reports whether or not expenditures are made. Each expense report shall set forth the date of each expenditure, to whom paid, the name of any legislator who benefitted from each expenditure, and the amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00) and (6) contributions made, paid, incurred or promised, directly or indirectly. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the lobbyist shall not be required to report the name of any legislator, but shall be required to report the number of legislators or, with particularity, the basis for their selection.

(b1) The report of lobbying activities shall cover the period between January 1 and the last day of the regular session. The lobbyist shall file a supplemental report covering all lobbying activities engaged in after the last day of the regular session, but during the calendar year, by February 28 of the following year. The lobbyist shall file both reports of lobbying activities, whether or not any lobbying occurred. The report of lobbying activities shall state the following:

(1) A list of the specific issues upon which that lobbyist engaged in lobbying, including, to the maximum extent practicable, a list of the bill numbers; and

(2) With regard to each specific issue, whether the lobbyist spent on that issue ten percent (10%) or more of the total time the lobbyist spent lobbying for the principal. For each issue on which the lobbyist spent approximately ten percent (10%) or more of the total time the lobbyist spent lobbying for the principal, the report shall further state the principal's position on the specific issue, including whether the principal supported or opposed specific legislation, identifying the legislation by bill number where possible, and any proposed amendments that the principal favored or opposed. The lobbyist may attach to the statement of lobbying activities a copy of correspondence or other documents setting forth the principal's position on the specific issue.

(c) All reports shall be in the form prescribed by the Secretary of State and shall be open to public inspection. The Secretary of State may combine the expense report and the lobbying activities report on a single form, or place them on separate forms.

(d) When a lobbyist fails to file a lobbying expense report or report of lobbying activities as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ($10.00). Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file ~~an expense~~ a report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 3. G.S. 120-47.7 reads as rewritten:

"**§ 120-47.7. Statements ~~of~~ by lobbyist's principal of lobbying expenses and of lobbying activities required.**

(a) Each lobbyist's principal shall file an expense report and a report of lobbying activities with the Secretary of State within 60 days after the last day of the regular session. ~~This expense report shall include all expenditures made between January 1 and the last day of the regular session. The principal shall file a supplemental expense report, including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year. The principal shall file both expense reports whether or not expenditures are made during a reporting period.~~

(b) The expense report shall include all expenditures made between January 1 and the last day of the regular session. The principal shall file a supplemental report including all expenditures made after the last day of the regular session, but during the calendar year, by February 28 of the following year. The principal shall file both expense reports whether or not expenditures are made. Each expense report shall set forth the name and address of each lobbyist employed, appointed, or retained by the lobbyist's principal, the date of each expenditure made, to whom paid, name of any

legislator who benefitted from each expenditure, and amount of each expenditure made during the previous reporting period in connection with lobbying, in each of the following categories: (1) transportation, (2) lodging, (3) entertainment, (4) food, (5) any item having a cash equivalent value of more than twenty-five dollars ($25.00), (6) contributions made, paid, incurred or promised, directly or indirectly, and (7) compensation to lobbyists in connection with their lobbying activities. It shall not be necessary to report expenditures of twenty-five dollars ($25.00) or less, nor shall it be necessary to report any expenditures made in connection with the attendance of a legislator at any fund-raising function or event sponsored by a nonprofit organization qualified under 26 U.S.C. § 501(c). When more than 10 members of the General Assembly benefitted or were invited to benefit from an expenditure, the principal shall not be required to report the name of any legislator, but shall be required to report the number of legislators or the basis for their selection. In the category of compensation to lobbyists the principal shall estimate and report the compensation paid or promised directly or indirectly, to all lobbyists based on the estimated time, effort and expense in connection with lobbying activities on behalf of the principal. If a lobbyist is a full-time employee of the principal, or is compensated by means of an annual fee or retainer, the principal shall estimate and report the portion of all such lobbyists' salaries or retainers that compensate the lobbyists for lobbying.

(b1) The report of lobbying activities shall cover the period between January 1 and the last day of the regular session. The principal shall file a supplemental report covering all lobbying activities engaged in after the last day of the regular session, but during the calendar year, by February 28 of the following year. The principal shall file both reports of lobbying activities, whether or not lobbying occurred. The report of lobbying activities shall state the following:

(1) The name and address of each lobbyist employed, appointed, or retained by the principal;

(2) A list of the specific issues upon which each lobbyist lobbied on behalf of the principal, including, to the maximum extent practicable, a list of the bill numbers; and

(3) Of the total compensation the principal paid to each lobbyist during the reporting period, an approximate proportion of that total amount that was paid for lobbying each issue.

(b2) The principal shall state in its report of lobbying activities the name of any political committee of which it is the parent entity under the provisions of G.S. 163-278.19.

(c) All reports shall be in the form prescribed by the Secretary of State and open to public inspection. The Secretary of State may combine the expense report and the lobbying activities report on a single form, or place them on separate forms.

(d) When a lobbyist's principal fails to file a lobbying expense report or a report of lobbying activities as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the

required report and a late filing fee of ten dollars ($10.00). Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 4. This act becomes effective January 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 539 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Hoyle
Sen.)

moves to amend the bill on page 2, line 40 THROUGH PAGE 3, LINE 12

( ) WHICH CHANGES THE TITLE

by REWRITING THE LINES TO READ:

" OF LOBBYING ACTIVITIES SHALL STATE THE SPECIFIC ISSUES UPON WHICH THAT LOBBYIST ENGAGED IN LOBBYING AS DEFINED IN G.S. 120-47.1, INCLUDING, TO THE MAXIMUM EXTENT PRACTICABLE, A LIST OF BILL NUMBERS. ".

SIGNED Hoyle

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 539 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) NOYCE
Sen.)

moves to amend the bill on page 4, lines 31 THROUGH 33

( ) WHICH CHANGES THE TITLE

by DELETING THE LINES

SIGNED D Noyce

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

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Legislative Services Office

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April 17, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 539 - LOBBYIST DISCLOSURE** - Senator Miller

Senate Bill 539 amends the lobbyist registration statutes to require lobbyists and the lobbyist's principal to include in their registration filings and expense reports information on the issues and bills they are interested in and will or have lobbied on. The bill also requires the lobbyist and the lobbyist's principal to identify any political action committees the lobbyist's principal is affiliated with.

Section 1 of the bill amends the registration procedures for lobbyists by requiring in addition to the information currently required, a statement of the general issue areas the lobbyist expects to lobby in on behalf of each principal the lobbyist works for. The lobbyist is also required to furnish the name of every political committee that the lobbyist's principal is the parent entity for under the election laws.

Section 2 amends the lobbyist expense reporting statute to include a report on lobbying activities. The lobbying activities are reported on the same schedule as the reports of expenses. The activity report should include a list of specific issues the lobbyist lobbied on, including bill numbers when possible. This report is also to report on issues that required 10% or more of a lobbyist's time by giving the principal's position on the specific issue, including support or opposition for the bill by number, and whether the principal favored or opposed any proposed amendments to the bills.

Section 3 amends the lobbyist's principal reporting statute to include a report on lobbying activities the same as required for the lobbyist. Additionally, the principal is required to disclose the total compensation the principal paid each lobbyist and what portion of that compensation was paid for lobbying each issue. The principal is also required to disclose the name of any political committee the principal is the parent entity of under the election laws.

The bill would become effective January 1, 1999.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§163-278.6. Definitions.

When used in this Article:

(14) The term "political committee" means a combination of two or more individuals, or any person, committee, association, or organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any election, or which receives contributions to repay loans or cover a deficit, or which makes expenditures to satisfy obligations of an election already held. The term includes, without limitation, any political party's State, county or district executive committee.

§ 163-278.19. Violations by corporations, business entities, labor unions, professional associations and insurance companies.

(e) Notwithstanding the prohibitions specified in this Article and Article 22 of this Chapter, a political committee organized under provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support that shall include, but not be limited to, record keeping, computer services, billings, mailings to members of the committee, and such other support as is reasonably necessary for the administration of the committee.

The approximate cost of any record keeping, computer services, billings, mailings, office supplies, and office space provided on a continuing basis shall be submitted to the committee, in writing, and the committee shall include that cost on the annual report required by G.S. 163-278.9(a)(6). Also included in the report shall be the approximate allocable portion of the compensation of any officer or employee of the corporation, business entity, labor union, professional association, or insurance company who has devoted more than thirty-five percent (35%) of his time during normal business hours of the corporation, business entity, labor union, professional association, or insurance company during the period covered by the required report. The approximate cost submitted by the parent corporation, business entity, labor union, professional association, or insurance company shall be entered on the committee's annual report as the final entry on its list of "contributions" and a copy of the written approximate cost received by it shall be attached.

The administrative support given by a corporation, business entity, labor union, professional association, or insurance company shall be designated on the books of the corporation, business entity, labor union, professional association, or insurance company as such and may not be treated by it as a business deduction for State income tax purposes.

VISITOR REGISTRATION SHEET

Commerce — 4/17/97
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Stan Goff	Democracy South 604 Hatch Rd Chapel Hill, NC 27516
Wm WARREN MURPHY	NC ALLIANCE FOR DEMOCRACY "
Mike Carnette	NCOTSA
Bernard Allen	Secy of State
Mike Blum	DHR
John May	NC CWA
Becky Street	PPAHB
BERRY JENKINS	NCDOT
R. Paul Wilms	NCHBA
John Henderson	CAL. of N.C.
Alan Miller	Bailey & Dixon LLP
Keith Hundley	Wyrick Robbins
Ed Powell	AAMA
Dan Forte	NCRA
Tom Jurgensen	ACRA

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
BOB KAPEL	TOWN OF HOLLY SPRINGS
Steve Reinhard	Johnson, Mercer, Hearn & Vinegar
Henry Jones	Attorney Raleigh

MINUTES
SENATE COMMERCE COMMITTEE
April 22, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building on Tuesday, April 22, 1997, at 11:00 a.m. Eighteen members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets..

Senator Soles, Chairman, called the meeting to order.

The following bills were considered by the Committee:

SB 945, AN ACT TO REQUIRE THE PRESCRIBER'S AND THE PATIENT'S CONSENT FOR INTERCHANGE OF A LIMITED CLASS OF DRUGS.

Senator Rand, the bill sponsor, offered a Committee Substitute for Senate Bill 945 and moved its adoption. Motion carried. He said the bill provides that a prescription for a "narrow therapeutic index drug" must be refilled only with the same product from the same manufacturer as the previous prescription unless the prescriber and the patient agree in writing to another manufacturer's product. (See attached memorandum for additional information.) Senator Rand said the bill had the support of the N. C. Medical Society, the North Carolina Academy of Physicians and other related groups.

Several speakers were heard who supported the bill: Dr. Christine Dean with the Epilepsy Institute of North Carolina; and Dr. James B. Groce, Assistant Professor of Pharmacy at Campbell University, Clinical Instructor of Medicine, UNC School of Medicine and Clinical Pharmacist II, The Moses Cone Health System. Also present and supporting the bill were Ms. Fran Hamilton and Dr. Michael Tennyson. Senator Rand explained that the legislation affects only a very narrow range of drugs and it sets up a method for listing these drugs.

Mr. Bruce L. Downey, Chairman and Chief Executive Officer of Barr Laboratories, Inc., of Pomona, New York, spoke in opposition to the bill. Barr Laboratories is one of the largest generic producers in the country. (See handout in the Commerce Committee Files presented by Mr. Downey.)

Senator Rand moved that the Committee Substitute for Senate Bill 945 be given a favorable report. Motion carried.

SB 809, AN ACT AMENDING THE NORTH CAROLINA APPRAISERS ACT.

Senator Ledbetter, the sponsor of the bill was recognized. He said the bill provides that the law regulating real estate appraisers does not prevent a licensed real estate salesman or broker from doing a comparative market analysis or a broker's market analysis as long as the salesman or broker does not claim to be a certified or licensed real estate appraiser. Section 2 defines a "broker's market analysis" as an analysis of the probable sales price of a property. (See attached memorandum for additional information.)

Senator Reeves sent forward an amendment to the bill and moved its adoption. The motion carried. (See attached copy.)

Senator Ledbetter moved that Senate Bill 809, as amended, be given a favorable report and that the amendment be rolled into a committee substitute. The motion carried.

SB 646, AN ACT TO DESIGNATE THE SQUARE DANCE AS THE AMERICAN FOLK DANCE OF THE STATE OF NORTH CAROLINA.

Senator Rucho, the bill sponsor explained the legislation. Senator Rand moved that Senate Bill 646 be given a favorable report. Motion carried.

SB 408, AN ACT TO ENHANCE, ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY GENERATED BY SMALL POWER PRODUCERS OF FIVE MEGAWATTS OR LESS BY PROVIDING THAT AVOIDED COSTS TO A UTILITY FROM THAT ENERGY BE CALCULATED BY THE RESIDUAL REVENUE METHOD.

Senator Bob Shaw, the sponsor explained the purpose of the legislation. He offered a Committee Substitute for the bill and moved its adoption. Motion carried. He called on Mr. Steve Cook, President of Cook Industries, Inc. of Greensboro, to assist in the explanation. (Information presented is contained in a handout contained in the Senate Commerce Committee Files.)

Because of a lack of time, the Committee was unable to finish consideration of this bill, and the Chairman stated that he would carry it over to the next meeting of the Committee.

The meeting adjourned at 12 Noon.

Senator R. C. Soles, Jr. Chairman Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, April 22, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **646** Official State Dance.
Sequential Referral: None
Recommended Referral: None

S.B. **814** In-Stand ABC Sales.
Sequential Referral: None
Recommended Referral: None

S.B. **837** Sports Club ABC Permits.
Sequential Referral: None
Recommended Referral: None

S.B. **838** Tourism Resort ABC Permits.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **382** Redefine Unemp. Ins. Base Period.
Draft Number: PCS2722
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **629** Expedite Johnston School Construction
Draft Number: PCS2721
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **945** Prescription Refill Safety Act.

Draft Number:	PCS 1780
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 7

Committee Clerk Comment:

monitoring. Drugs identified as having narrow therapeutic indices shall be designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board, as narrow therapeutic index drugs and shall be subject to the provisions of G.S. 90-85.28(b1). The list of narrow therapeutic index drugs shall be published annually in January in the North Carolina Register;

(5) 'Prescriber' means anyone authorized to prescribe drugs pursuant to the laws of this State."

Section 2. G.S. 90-85.28 is amended by adding the following new subsection to read:

"(b1) A prescription for a narrow therapeutic index drug shall be refilled using only the same drug product by the same manufacturer that the pharmacist last dispensed under the prescription, unless the prescriber is notified by the pharmacist prior to the dispensing of another manufacturer's product, and the prescriber and the patient give written consent to the dispensing of the other manufacturer's product. For purposes of this subsection, the term 'refilled' shall include a new prescription written at the expiration of a prescription which continues the patient's therapy on a narrow therapeutic index drug."

Section 3. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 945
Proposed Committee Substitute S945-PCS1780

Short Title: Prescription Refill Safety Act. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE PRESCRIBER'S AND THE PATIENT'S CONSENT FOR INTERCHANGE OF A LIMITED CLASS OF DRUGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.27 reads as rewritten:

"**§ 90-85.27. Definitions.**

As used in G.S. 90-85.28 through G.S. 90-85.31:

(1) 'Equivalent drug product' means a drug product which has the same established name, active ingredient, strength, quantity, and dosage form, and which is therapeutically equivalent to the drug product identified in the prescription;

(2) 'Established name' has the meaning given in section 502(e)(3) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 352(e)(3);

(3) 'Good manufacturing practice' has the meaning given it in Part 211 of Chapter 1 of Title 21 of the Code of Federal Regulations;

(4) 'Manufacturer' means the actual manufacturer of the finished dosage form of the drug;

(4a) 'Narrow therapeutic index drugs' means those pharmaceuticals having a narrowly defined range between risk and benefit. Such drugs have less than a twofold difference in the minimum toxic concentration and minimum effective concentration in the blood or are those drug product formulations that exhibit limited or erratic absorption, formulation-dependent bioavailability, and wide

intrapatient pharmacokinetic variability that requires blood-level monitoring. Drugs identified as having narrow therapeutic indices shall be designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board, as narrow therapeutic index drugs and shall be subject to the provisions of G.S. 90-85.28(b1). The North Carolina Board of Pharmacy shall submit the list of narrow therapeutic index drugs to the Codifier of Rules, in a timely fashion for publication in January of each year in the North Carolina Register.

(5) 'Prescriber' means anyone authorized to prescribe drugs pursuant to the laws of this State."

Section 2. G.S. 90-85.28 is amended by adding the following new subsection to read:

"(b1) A prescription for a narrow therapeutic index drug shall be refilled using only the same drug product by the same manufacturer that the pharmacist last dispensed under the prescription, unless the prescriber is notified by the pharmacist prior to the dispensing of another manufacturer's product, and the prescriber and the patient give written consent to the dispensing of the other manufacturer's product. For purposes of this subsection, the term 'refilled' shall include a new prescription written at the expiration of a prescription which continues the patient's therapy on a narrow therapeutic index drug."

Section 3. This act becomes effective July 1, 1997.

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April 22, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones
Committee Counsel

RE: Senate Bill 945 (Prescription Safety Refill Act)

Senate Bill 945 provides that a prescription for a "narrow therapeutic index drug" must be refilled only with same product from the same manufacturer as the previous prescription unless the prescriber and the patient agree in writing to another manufacturer's product.

A narrow therapeutic index drug is a drug with a narrow range between its risk and benefit. These drugs would be designated by the Secretary of DHR, with the advice of the State Health Director, the Board of Pharmacy, and the North Carolina Medical Board, and published annually in the North Carolina Register.

The bill would take effect July 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 809

Short Title: Amend NC Appraisers Act. (Public)

Sponsors: Senators Ledbetter; Albertson, Allran, Ballance, Ballantine, Blust, Carpenter, Carrington, Clark, Cochrane, Conder, Cooper, Dalton, Dannelly, East, Forrester, Garwood, Gulley, Hartsell, Horton, Hoyle, Jenkins, Jordan, Kerr, Kincaid, Kinnaird, Lee, Lucas, Martin of Pitt, Martin of Guilford, McDaniel, Miller, Odom, Page, Perdue, Phillips, Rand, Rucho, Shaw of Guilford, Soles, Warren, and Weinstein.

Referred to: Commerce.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE NORTH CAROLINA APPRAISERS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93E-1-3(c) reads as rewritten:

"(c) Nothing in this Chapter shall preclude a real estate broker or salesman licensed under Chapter 93A of the General Statutes from performing a comparative market ~~analysis, provided~~ analysis or broker's market analysis so long as the person does not represent himself or herself as being State-licensed or State-certified as a real estate ~~appraiser.~~ appraiser, and the analysis states that it is not an appraisal. A comparative market analysis or broker's market analysis may be performed for compensation."

Section 2. G.S. 93E-1-4 reads as rewritten:

"**§ 93E-1-4. Definitions.**

~~When used in this Chapter, unless the context otherwise requires, the term:~~ The following definitions apply in this Chapter:

(1) ~~"Appraisal" or "real estate appraisal" means an~~ Appraisal or real estate appraisal. -- An analysis, opinion, or conclusion as to the value of identified real estate or specified interests therein performed for compensation or other valuable consideration.

(2) ~~"Appraisal assignment" means an~~ Appraisal assignment. -- An engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased appraisal.

(3) ~~"Appraisal Board" or "Board" means the~~ Appraisal Board or Board. -- The North Carolina Appraisal Board established under G.S. 93E-1-5.

(4) ~~"Appraisal Foundation" or "Foundation" means~~ Appraisal Foundation or Foundation. -- The Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois.

(5) ~~"Appraisal report" means any~~ Appraisal report. -- Any communication, written or oral, of an appraisal.

(5a) Broker's market analysis. -- The analysis of a property's condition and of competition and future market conditions to derive an indication of the probable sales price of the property and market strategies to be used by a licensed real estate broker or salesperson.

(6) ~~"Certificate" means that~~ Certificate. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements for certification as a State-certified real estate appraiser and bearing a certificate number assigned by the Board.

(7) ~~"Certificate holder" means a~~ Certificate holder. -- A person who is certified by the Board under the provisions of this Chapter.

(7a) ~~"Comparative market analysis" means the~~ Comparative market analysis. -- The analysis of sales of similar recently sold properties in order to derive an indication of the probable sales price of a particular property by a licensed real estate broker or ~~salesperson for the broker's or salesperson's principal.~~ salesperson.

(8) ~~"License" means that~~ License. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements for licensure as a State-licensed real estate appraiser and bearing a license number assigned by the Board.

(9) ~~"Licensee" means a~~ Licensee. -- A person licensed by the Board under the provisions of this Chapter.

(10) ~~"Real estate" or "real property" means land,~~ Real estate or real property. -- Land, including the air above and ground below and all appurtenances and improvements thereto, as well as any interest or right inherent in the ownership of land.

(11) ~~"Real estate appraiser" or "appraiser" means a~~ Real estate appraiser or appraiser. -- A person who for a fee or valuable consideration develops and communicates real estate appraisals or

otherwise gives an opinion of the value of real estate or any interest therein.

(12) ~~"Real estate appraising" means the~~ Real estate appraising. -- The practice of developing and communicating real estate appraisals.

(13) ~~"Residential real estate" means any~~ Residential real estate. -- Any parcel of real estate, improved or unimproved, that is exclusively residential in nature and that includes or is intended to include a residential structure containing not more than four dwelling units and no other improvements except those which are typical residential improvements that support the residential use for the location and property type. A residential unit in a condominium, town house, or cooperative complex, or planned unit development is considered to be residential real estate.

(14) ~~"State-certified general real estate appraiser" means a~~ State-certified general real estate appraiser. -- A person who holds a current, valid certificate as a State-certified general real estate appraiser issued under the provisions of this Chapter.

(15) ~~"State-certified residential real estate appraiser" means a~~ State-certified residential real estate appraiser. -- A person who holds a current, valid certificate as a State-certified residential real estate appraiser issued under the provisions of this Chapter.

(16) ~~"State-licensed residential real estate appraiser" means a~~ State-licensed residential real estate appraiser. -- A person who holds a current, valid license as a State-licensed residential real estate appraiser issued under the provisions of this Chapter.

(17) ~~"Temporary appraiser licensure or certification" means the~~ Temporary appraiser licensure or certification. -- The issuance of a temporary license or certificate by the Board to a person licensed or certified in another state who enters this State for the purpose of completing a particular appraisal assignment.

(18) ~~"Trainee", "registered trainee", or "trainee real estate appraiser" means a~~ Trainee, registered trainee, or trainee real estate appraiser. -- A person who has satisfied the requirements to be registered as a trainee pursuant to G.S. 93E-1-6, but who has not satisfied the experience and other requirements set forth in G.S. 93E-1-6 to be licensed as a real estate appraiser.

(19) ~~"Trainee registration" or "registration as a trainee" means the~~ Trainee registration or registration as a trainee. -- The document issued by the North Carolina Appraisal Board evidencing that the person named therein has satisfied the requirements of registration as a trainee real estate appraiser and bearing a registration number assigned by the Board."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 809 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) REEVES
Sen.)

moves to amend the bill on page 1, line 9

( ) WHICH CHANGES THE TITLE

by DELETING THE WORD "APPRAISAL." AND SUBSTITUTING THE WORDS "APPRAISAL AND SHALL NOT BE USED FOR LENDING PURPOSES."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

North Carolina General Assembly
Legislative Services Office

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

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

Gerry F. Cohen, Director
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Suite 401, LOB
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Thomas L. Covington, Director
Fiscal Research Division
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Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
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(919) 733-6834

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

April 22, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones
Committee Counsel

RE: Senate Bill 809 (Amend NC Appraiser Act)

Section 1 of the bill provides that the law regulating real estate appraisers does not prevent a licensed real estate salesman or broker from doing a comparative market analysis or a broker's market analysis as long as the salesman or broker does not claim to be a certified or licensed real estate appraiser. These market analysis can be performed for compensation.

Section 2 defines a "broker's market analysis" as an analysis of the probable sales price of a property, based on a review of the property's condition and of competition and future market conditions, and the market strategies to be used by the broker or salesperson. "Comparative market analysis" is already defined in the existing law (*see subdivision (7a)*), although the definition is amended in this bill to delete language that says that the analysis is performed for the broker's or salesperson's "principal." The remaining changes throughout Section 2 are only stylistic changes to the statute.

This act would take effect upon becoming law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 646*

Short Title: Official State Dance. (Public)

Sponsors: Senators Rucho; Blust, Carpenter, Odom, and Shaw of Guilford.

Referred to: Commerce.

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE THE SQUARE DANCE AS THE AMERICAN FOLK DANCE OF THE STATE OF NORTH CAROLINA.

Whereas, North Carolina has distinctive and meaningful symbols of its ideals in the State's flag and in many cultural endeavors, but no official designation of a State folk dance; and

Whereas, the square dance, which was first associated with the American people and recorded in history since 1651, has consistently been the one dance traditionally recognized by the American people as a dignified and enjoyable expression of American folk dancing; and

Whereas, square dancing is a traditional form of family recreation which symbolizes a basic strength of this country, namely the unity of family; and

Whereas, because of its exercise value, square dancing is an activity which fosters good health among the dancers; and

Whereas, square dancing is an activity for young and old and encourages fellowship among the dancers; and

Whereas, square dancing is the American folk dance which is called, cued, or prompted to the dancers, and includes squares, rounds, clogging, contra, line, and heritage dances; and

Whereas, numerous states have adopted the square dance as their state dance, including South Carolina, Virginia, Georgia, Tennessee, Alabama, and Maryland; and

Whereas, official recognition of the square dance will enhance the cultural stature of North Carolina both nationally and internationally; and

Whereas, national and international prestige is in the best interest of all Americans; and

Whereas, it is fitting that the square dance be added to the array of State symbols; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 145 of the General Statutes is amended by adding a new section to read:

"**§ 145-18. State dance.**

The square dance is adopted as the American folk dance of North Carolina."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 408

Short Title: Renewable Resource Energy. (Public)

Sponsors: Senators Shaw of Guilford and Cochrane.

Referred to: Commerce.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE, ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY GENERATED BY SMALL POWER PRODUCERS OF FIVE MEGAWATTS OR LESS BY PROVIDING THAT AVOIDED COSTS TO A UTILITY FROM THAT ENERGY BE CALCULATED BY THE RESIDUAL REVENUE METHOD.

Whereas, it is in the public interest to encourage small business development in the area of electric energy generation and to enhance the continued economic feasibility of the production of renewable energy at small power production facilities producing five megawatts or less of electricity; and

Whereas, the operation of such small power production facilities helps to curtail the need for facilities operating on fossil fuels; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-156 reads as rewritten:

"**§ 62-156. Power sales by small power producers to public utilities.**

(a) In the event that a small power producer and an electric utility are unable to mutually agree to a contract for the sale of electricity or to a price for the electricity purchased by the electric utility, the commission shall require the utility to purchase the power, under rates and terms established as provided in subsection (b) of this section.

(b) No later than March 1, 1981, and at least every two years thereafter, the commission shall determine the rates to be paid by electric utilities for power

purchased from small power producers, other than those producers described in subsection (c) of this section, according to the following standards:

(1) Term of Contract. -- Long-term contracts for the purchase of electricity by the utility from small power producers shall be encouraged in order to enhance the economic feasibility of small power production facilities.

(2) Avoided Cost of Energy to the Utility. -- The rates paid by a utility to a small power producer shall not exceed, over the term of the purchase power contract, the incremental cost to the electric utility of the electric energy which, but for the purchase from a small power producer, the utility would generate or purchase from another source. A determination of the avoided energy costs to the utility shall include a consideration of the following factors over the term of the power contracts: the expected costs of the additional or existing generating capacity which could be displaced, the expected cost of fuel and other operating expenses of electric energy production which a utility would otherwise incur in generating or purchasing power from another source, and the expected security of the supply of fuel for the utilities' alternative power sources.

(3) Availability and Reliability of Power. -- The rates to be paid by electric utilities for power purchased from a small power producer shall be established with consideration of the reliability and availability of the power.

(c) The rates paid by a utility to a small power producer producing five megawatts of electricity or less at the same site and at dams in existence prior to 1997, shall be determined by using the residual revenue method as follows: by deducting from the Commission's approved residential retail rate for electricity for the applicable utility a billing and distribution charge, not to exceed ten percent (10%) of the retail rate, and a handling charge, not to exceed twelve percent (12%) of the retail rate. The result of this calculation shall be the avoided cost to the utility. The percentage deduction for the billing and distribution charge and the handling charge may be established by agreement between the small power producer and the utility for a period of up to 15 years, but the rate paid by a utility shall fluctuate as the Commission's approved residential rate for electricity for the receiving utility fluctuates."

Section 2. This act is effective when it becomes law and applies to contracts entered into on or before January 1, 1997.

VISITOR REGISTRATION SHEET

Commerce Committee — April 22, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Jim Lofton	NCAFL
Peyton Mayhew	GPC
Mari A. Stein	NCSA
Brenda Dougherty	Sprint
J R Miller	AGO
Patty Berry	CCNC
FRED Killian	Winstead Sechrest
BRUCE DOWNEY	BAKER HOSTETLER
David Cleary	Utilities Commission Staff
Robert Pearson	Knoll Pharmaceutical Co.
LUIS SANCHEZ	KNOLL PHARMACEUTICAL CO
Bill Connell	N.C. Dept of Revenue
Mac Beach	NC Appraisal Board
Roberta Ouellette	Office of the Attorney General
Steve Keene	NC Med Soc.
Tony Jo Bair	Smith Anderson
FRAN [illegible]	NCRMA
DON MCCORQUODALE	NCRMA
BILL STANHOUSE	DuPont
N. DAVID SMITH	NCDA
John Bowdish	Zeb Alley PA

VISITOR REGISTRATION SHEET

Commerce Committee — April 22, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Mary Leanne	APT
Len Anthony	CBIC
Susan Hall	NCMS
Carl G	Self
Charlie MAYR	BAKER LABORATORIES
Jean Worrell	[illegible]
Nancy Bradley	NCCBC
Tony Taylor	
[illegible]	CCCR of N.C.
[illegible]	[illegible]
[illegible]	NC Assoc of Realtors
Doris Weaver	N.C. CWA Political Council
Alice Garland	Electricities
[illegible]	Bone McAllester [illegible]
[illegible]	[illegible]
Tom Sawyer	Baker Laboratories
Gary Harris	NC Petroleum Marketers Assoc.
Ron Aycock	N C Assn. of County Com.
Terry Grunewald	NC Justice & Community Dev. Ctr.
Bill Patterson	Hunton & Williams
Amy Atkinson	Hunton & Wms.

VISITOR REGISTRATION SHEET

Commerce Committee
Name of Committee

April 22, 1997
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ellen Franklin	Novartis Richmond, VA
Ron Aycock	Count., Com. Assoc.
John McAlister	Duke Power Co.
[illegible]	CP&L
[illegible]	BC BSNC
[illegible]	BCBSNC
Lucius Pullen	Attorney
[illegible]	S.E.A.R.C.
[illegible]	—
[illegible]	Moore & Van Allen
[illegible]	N.C. Manufactured Housing
[illegible]	N.C.A.C.C.
[illegible]	NCJCDC
[illegible]	[illegible]
[illegible]	NCUC staff

VISITOR REGISTRATION SHEET

Commerce Committee — April 22, 1997
Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
David Simmons	Zeb Alley, PA
Henderson Tim	ATA Properties Gibsonville
Steve Cook	Cook Industries Inc.
Bruce Cox	Cox Lake Hydro Electric
John Hagan	Hydro Ogee Industries
Andrew C Stevens	Cardinal Energy Services Inc.
Mike Allen	CARBONTON Hydroelectric, Inc.
DON HOOVER	NCUC STAFF
KR Hundley	WKYD
Michael Thompson	North Carolina Power

MINUTES
SENATE COMMERCE COMMITTEE
April 24, 1997

A meeting of the Commerce Committee was held on April 24, 1997 at 8 o'clock a.m. in Room 1027 of the Legislative Building. Twelve members were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Sen. R. C. Soles, Jr., Chairman, called the meeting to order.

The following bills were considered by the committee:

SB 994 - AN ACT TO PROHIBIT THE DIRECT SHIPMENT OF ALCOHOLIC BEVERAGES TO CONSUMERS IN NORTH CAROLINA.

Sen. Rand, bill sponsor, was recognized to explain the bill. An amendment was sent forth and Sen. Rand moved that it be adopted, motion carried. Sen. Rand then moved that SB 994, as amended, be given a favorable report and that the amendment be rolled into a committee substitute. The motion carried.

SB 848 - AN ACT TO PROVIDE THAT A SECONDARY SUPPLIER OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, AND TO MAKE TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

Sen. Dalton, bill sponsor, explained the bill.

Mr. John McAlister, Duke Power Company, told the committee that he would like this bill looked at in a study commission. Mr. Chris Heagarty, NC Electric Co-Operatives, spoke in favor of the bill. Sen. Cochrane moved to give the bill a favorable report. The motion carried.

SB 846 - AN ACT TO REQUIRE RETAILERS OF CERTAIN GOODS TO TAKE THEM BACK TO BE RECYCLED OR PROPERLY DISPOSED.

Sen. Odom, bill sponsor, was recognized to explain the bill. Sen. Odom requested chairman to put this bill aside until he had time to do some additional work on it. This bill will be taken up at a later date.

SB 992 - AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION.

Mr. Shawn Lemmond, Secretary of State's office, was recognized to explain this bill. Sen. Warren made a motion to give the bill a favorable report. The motion carried.

SB 914 - AN ACT TO REVISE THE REIMBURSEMENT METHODOLOGY FOR HOSPITAL CHARGES UNDER WORKERS' COMPENSATION.

Sen. Kerr, bill sponsor, was recognized to explain the bill.

Bill Pulley, North Carolina Hospital Association, spoke in favor of the bill.

Sen. Rand moved to give the bill a favorable report. The motion carried.

There being no further business, meeting adjourned.

Sen. R. C. Soles, Jr., Chairman

Janet Blalock, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 994

Short Title: No Direct ABC Shipments-Consumers. (Public)

Sponsors: Senators Rand; and Hoyle.

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DIRECT SHIPMENT OF ALCOHOLIC BEVERAGES TO CONSUMERS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

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

"**§ 18B-102.1. Direct shipments from out-of-state prohibited.**

(a) It is unlawful for any person who is an out-of-state retail or wholesale dealer in the business of selling alcoholic beverages to ship or cause to be shipped any alcoholic beverage directly to any North Carolina resident who does not hold a valid wholesaler's permit under Article 11 of this Chapter.

(b) The Commission shall mail a notice by certified mail ordering a person who violates the provisions of subsection (a) of this section to cease and desist any shipments of alcoholic beverages to North Carolina residents. If the offender cannot produce a receipt or otherwise show that applicable State taxes have been paid on the shipped alcohol within 30 days after this notice has been deposited by certified mail addressed to the out-of-state retail or wholesale dealer either at the address shown on the shipment or the last know address of that dealer in any legal registry, such as a registry with the Secretary of State for incorporation of a business, or within 30 days after personal service of the notice on the out-of-state retail or wholesale dealer, it shall be presumptive evidence of his intent to ship alcoholic beverages directly to a North Carolina resident who does not hold a valid wholesaler's permit issued by the Commission.

(c) This section shall not apply to producers of beverage alcohol holding a basic permit from the Bureau of Alcohol, Tobacco and Firearms.

(d) Upon determination by the Commission that a holder of a basic permit from the Bureau of Alcohol, Tobacco and Firearms has made an illegal shipment to consumers in North Carolina, the Commission shall notify the Bureau of Alcohol, Tobacco and Firearms in writing and by certified mail and request the Bureau to take appropriate action.

(e) Whoever violates the provisions of this section shall be guilty of a felony and shall pay a fine of not more than ten thousand dollars ($10,000)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 848

Short Title: Municipal Electric Amendments. (Public)

Sponsors: Senators Dalton; Albertson, Allran, Ballance, Forrester, Gulley, Hartsell, Horton, Hoyle, Jenkins, Jordan, Lucas, Miller, Phillips, Rand, Reeves, Weinstein, and Wellons.

Referred to: Commerce.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A SECONDARY SUPPLIER OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, AND TO MAKE TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-332(a) reads as rewritten:

"(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

(1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

(2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.

(3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.

(4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), and (3) of this section, except with the written consent of the secondary supplier.

(5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(7) Except as provided in subdivisions (1), (2), (3), (5), and (6) of this section, a secondary supplier shall not furnish electric service within the corporate limits of any city unless it first obtains the written consent of the ~~city and the primary supplier.~~ city."

Section 2. G.S. 117-10.1 reads as rewritten:

"**§ 117-10.1. Municipal franchises.**

An electric membership corporation shall be eligible to receive a franchise pursuant to ~~G.S. 160-2(6)~~ G.S. 160A-319 from any city or ~~town:~~ town.

~~(1) In which such electric membership corporation is on April 20, 1965 furnishing electric service at retail to a majority of the electric meters; or~~

~~(2) To which such electric membership corporation is on April 20, 1965 furnishing the entire supply of electricity at wholesale; or~~

~~(3) Which is newly incorporated subsequent to April 20, 1965, and in which on the effective date of such incorporation the electric membership corporation is furnishing electric service at retail to a majority of the meters.~~"

Section 3. G.S. 117-10.2 reads as rewritten:

"**§ 117-10.2. Restriction on municipal service.**

No electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of ~~G.S. 117-10.1,~~ G.S. 160A-319, or as permitted under ~~G.S. 160-511, 160-512, and 160-513;~~ G.S. 160A-331, 160A-332, and 160A-333, ~~provided, that an electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing.~~"

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 846

Short Title: Retailers to Accept Goods for Disposal. (Public)

Sponsors: Senators Odom; and Kinnaird.

Referred to: Commerce.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE RETAILERS OF CERTAIN GOODS TO TAKE THEM BACK TO BE RECYCLED OR PROPERLY DISPOSED.

The General Assembly of North Carolina enacts:

Section 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2E. Retailer Acceptance of Hard-to-Dispose Items.

"§ 130A-309.90. Retailers required to accept certain hard-to-dispose items; posting of notice required.

(a) A person who sells or offers for sale any hard-to-dispose items at retail in this State shall accept from customers, at the point of transfer or sale, used items of the type and in the quantity at least equal to the number of new such items purchased, if offered by customers.

(b) A person who sells or offers for sale any hard-to-dispose items at retail in this State shall post written notice that is at least 8 1/2 inches by 11 inches in size and that contains the universal recycling symbol and that states that State law requires retailers to accept used items of that type for recycling in exchange for new items purchased of the same type.

(c) Any person who fails to post the notice required by subsection (b) of this section after receiving written warning from the Department to do so shall be assessed a civil penalty of not more than fifty dollars ($50.00) per day for each day the person fails to post the required notice.

(d) For purpose of this Part, 'hard-to-dispose items' means all of the following:

(1) Telephone books.

(2) Nickel-cadmium batteries.
(3) Mercuric oxide batteries.
(4) Automobile tires.
(5) Fluorescent lights that the Department determines contain toxic levels of substances.
(6) Hypodermic needles.
(7) Propane tanks.
(8) Smoke detectors.
(9) Pesticide containers specified by the Department.
(10) Products with cathode ray tubes specified by the Department.
(11) Motor oil.
(12) Antifreeze.
(13) Oil-based paint and solvents.
(14) White goods as defined in G.S. 130A-290.

"§ 130A-309.91. Wholesalers required to accept hard-to-dispose items.

(a) No person selling new hard-to-dispose items at wholesale shall refuse to accept from customers, at the point of transfer, any used item of the type and in a quantity at least equal to the number of new such items purchased, if offered by customers. A person accepting a hard-to-dispose item in transfer from a retailer of those items shall be allowed a period not to exceed 90 days to remove these items from the retail point of collection.

(b) Any person who violates this section shall be assessed a civil penalty of fifty dollars ($50.00) per violation. Each item refused by a wholesaler or not removed from the retail point of collection within 90 days is a separate violation.

"§ 130A-309.92. Inspections of retailers authorized; construction of this Part.

(a) The Department may inspect any place, building, or premise subject to the provisions of G.S. 130A-309.90. The Department may issue warnings to persons who fail to comply with the provisions of this Part.

(b) The provisions of this Part shall not be construed to prohibit any person who does not sell any of the hard-to-dispose items from collecting and recycling such items.

"§ 130A-309.93. Landfilling and incineration of hard-to-dispose items prohibited; delivery for recycling.

(a) No person shall knowingly place or dispose of a used hard-to-dispose item in a landfill, an incinerator, or a waste-to-energy facility. Any person may deliver any hard-to-dispose items to a retailer or wholesaler of that item, or to a collection or recycling facility authorized under this Chapter or by the United States Environmental Protection Agency.

(b) No retailer of any hard-to-dispose items shall knowingly place or dispose of those used items in a landfill, incinerator, or waste-to-energy facility. A retailer of any hard-to-dispose items may deliver those items to an agent of a wholesaler of those items, to a manufacturer of those items, or to a collection or recycling facility authorized under this Chapter or by the United States Environmental Protection Agency.

(c) Any person who knowingly places or disposes of any hard-to-dispose items in violation of this section shall be assessed a civil penalty of not more than fifty dollars ($50.00) per violation. Each such item improperly disposed of is a separate violation."

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

North Carolina General Assembly
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April 22, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 846 - RETAILERS TO ACCEPT GOODS FOR DISPOSAL -** Senator Odom

Senate Bill 846 would require retailers and wholesalers to accept back from a purchaser of new hard-to-dispose of items, similar hard-to-dispose of items in amounts at least equal to the new purchases of these items.

The bill defines "hard-to-dispose items" to include telephone books, nickel-cadmium batteries, mercuric oxide batteries, automobile tires, certain toxic fluorescent lights, hypodermic needles, propane tanks, smoke detectors, certain pesticide containers, certain products with cathode ray tubes, motor oil, antifreeze, oil-based paints and solvents, and white goods

Under the bill, retailers will be required to post a sign stating that State law requires the retailer to accept used items for recycling in exchange for new items purchased of the same type. Failure to post the sign is subject to a $50 per day civil penalty. Wholesalers are given a period of up to 90 days to remove items accepted upon the purchase of new items, and wholesalers are subject to a civil penalty of $50 for each violation of this statute.

The bill also authorizes the Department of Environment, Health, and Natural Resources to inspect premises selling hard-to-dispose items and to warn persons not in compliance with this act.

The bill makes it illegal for any person or retailer to knowingly dispose of hard-to-place items in a landfill, incinerator, or a waste-to-energy facility, except for facilities authorized under Chapter 130A or the United States Environmental Protection

Agency. Violation of this provision is subject to assessment of a civil penalty up to $50 per violation. Each item improperly disposed of is considered a separate violation.

The bill becomes effective July 1, 1998.

National Paint & Coatings Association

April 23, 1997

Honorable R. C. Soles, Jr.
Chairman, Senate Commerce Committee
State Legislative Building
Raleigh, North Carolina 27603-2808

Re: Senate Bill 846 – Retailer Acceptance of Hard-to-Dispose Items

Dear Senator Soles:

We respectfully wish to register our opposition to Senate Bill 846 because of the adverse impact it would have on the paint and coatings industry at the retail, wholesale and manufacturer's levels. We have also written to the sponsor, Senator Odom, indicating our opposition to his legislation.

The National Paint and Coatings Association is a voluntary, nonprofit industry trade association representing some 400 paint and coatings manufacturers, raw material suppliers and distributors. Our membership collectively produces approximately 75 percent of the total volume of paint and coatings sold in the United States, a fair amount of which is produced in North Carolina.

Senate Bill 846 would require the "take-back" of, among other things, oil-based paints and solvents by retailers, wholesalers and manufacturers. Such a requirement would create major problems for the industry.

First, the paint and coatings industry is not equipped to be in the business of hazardous waste collection and disposal. Its business is to provide products of high value to the community which are meant to be *completely used up.*

Second, the return of containers of leftover oil-based paint as proposed would create significant potential health and safety hazards for those responsible for accepting and sorting the materials. This is because, unfortunately, experience has shown that consumers consider paint cans to be handy containers for mixing in such hazardous materials as used oil, pesticides and even, on occasion, industrial coatings (swimming pool paints, marine coatings, certain lacquers, etc.).

Not only would such contaminants present real risks for untrained handlers, they would also create major disposal problems for retailers, who are ill-equipped to identify, sort and dispose of such tainted paint products – assuming they would

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even have the necessary storage facilities. And for producers of paints and coatings, who take strong measures to prevent the contamination of their manufacturing facilities, the possibility of introducing unknown substances would create real concern because of the costs involved in decontamination.

Consider, too, the potential liability which could attach should there be injury or sickness resulting from the acceptance of tainted leftover paint. Is it fair to impose this burden? Wouldn't it be better public policy to encourage organized, effective management of post-consumer paint by those specially trained to be in that particular business?

Third, we note that Senate Bill 846 recognizes the likely problems for those receiving "leftover paint" products by allowing wholesalers to store the leftovers for up to 90 days. However, acceptance of such "hazardous waste products" at any level is likely to mean that permits would have to be obtained in order to handle, transport or dispose of such products or risk violation of federal (and probably state) regulations. This means additional costs and the burden of obtaining yet another set of environmental permits.

One parenthetical note. Senate Bill 846 appears to encourage recycling as an alternative to outright disposal. For many of the other "items" listed, recycling may well be feasible. However, despite the best efforts of the paint and coatings industry, the recycling of oil-based paint simply doesn't work; the chemistry is too complex. Even a brief focus on the variety of just the solvents alone used by manufacturers of oil-based paint – such as mineral spirits, alcohols, acetates and aliphatic solvents – should convince even the most skeptical.

NPCA has been outspoken in its support of the proper management of post-consumer paint. It has published and distributed two editions of its Post-Consumer Paint Management Guidance Manual and is the recognized source for materials which have assisted numerous community, municipal and state organizations throughout the country in their efforts to effectively deal with the issue of leftover paint products. We would be happy to share any and all of our materials with you and the members of your committee; just let us know how we can be of assistance.

Again, for the reasons outlined above, we respectfully urge you and the Senate Commerce Committee to reject Senate Bill 846.

Sincerely yours,

David W. Lloyd
Director, Government Affairs

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 992

Short Title: NC Boxing Commission. (Public)

Sponsors: Senators Conder and Forrester.

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-651 reads as rewritten:

"**§ 143-651. Definitions.**

~~As used in this Article:~~ The following definitions apply in this Article:

(1) ~~'Amateur' means a~~ Amateur. -- A person who is not and has never received or competed for any purse or other article or thing of value for participating in a match.

(2) ~~'Announcer' means any~~ Announcer. -- Any person who engages in the act of announcing a boxing match.

(3) ~~'Boxer' means any~~ Boxer. -- Any person who engages as a participant in a boxing match.

(4) ~~'Boxing match' means a~~ Boxing match. -- A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or ~~technical knockout (TKO), and shall include kickboxing matches as defined in this section.~~ technical knockout (TKO).

(5) ~~'Commission' means the~~ Commission. -- The North Carolina State Boxing Commission.

(6) ~~'Contest' means a~~ Contest. -- A boxing match in which the participants strive ~~earnestly~~ to win.

(7) ~~'Contestant' means any~~ Contestant. -- Any person who engages as a participant in a boxing match.

(8) ~~'Exhibition' means a~~ Exhibition. -- A boxing match where the participants display their boxing skills and technique without necessarily striving to win.

(9) ~~'Judge' means a~~ Judge. -- A person who has a vote in determining the winner of any match or contest.

(10) ~~'Kickboxer' means any~~ Kickboxer. -- Any person who engages as a participant in a kickboxing match.

(11) ~~'Kickboxing match' means a~~ Kickboxing match. -- A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) ~~'Licensee' means any~~ Licensee. -- Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) ~~'Manager' means any person, including an officer of a corporate manager and a managing partner of a partnership manager,~~ Manager. -- Any person who controls or administers the boxing affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his services, without regard to the sources of the ~~compensation, except that the~~ compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to ~~his~~ representing the interests of a professional boxer as ~~his client;~~ a client.

b. Directs or controls the professional boxing activities of any professional ~~boxer; or~~ boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) ~~'Match' means any~~ Match. -- Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) ~~'Matchmaker' means a~~ Matchmaker. -- A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) ~~'Natural person' means an~~ Natural person. -- An individual.

(17) ~~'Participant' means any~~ Participant. -- Any person who engages in a match or exhibition and performs as a boxer.

(18) ~~'Person' means an~~ Person. -- An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) ~~'Physician' means an~~ Physician. -- An individual licensed to practice medicine in this State.

(20) ~~'Professional' means any person who has received or competed for any purse or other article or thing of value for participating in a boxing match.~~ Professional. -- Any person who is licensed as a professional boxer under the Federal Professional Boxing Safety Act of 1996.

(21) ~~'Promoter' means any person, including an officer of a corporate promoter and a managing partner of a partnership promoter,~~ Promoter. -- Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) ~~'Referee' means the~~ Referee. -- The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) ~~'Ring official' means any~~ Ring official. -- Any person who performs an official function for the duration of a match.

(23a) Sanctioned amateur. -- A person who competes in a sanctioned amateur match.

(23b) Sanctioned amateur match. -- Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(24) ~~'Second' means any~~ Second. -- Any person who will work or be present in the corner of a participant for the duration of a match.

(25) ~~'Timekeeper' means any~~ Timekeeper. -- Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(25a) Toughman contestant. -- Any person who competes in a toughman event.

(25b) Toughman event. -- An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the

object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(26) ~~'Ultimate warrior match' means a~~ Ultimate warrior match. -- A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article."

Section 2. G.S. 143-652 reads as rewritten:

"**§ 143-652. State Boxing Commission.**

(a) Creation. -- The North Carolina State Boxing Commission is created within the Department of the Secretary of State to regulate in North Carolina live boxing and kickboxing matches, whether ~~professional or~~ professional, amateur, sanctioned amateur, or toughman events, ~~in North Carolina.~~ in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of five voting members and two advisory members. All the members shall be residents of North ~~Carolina.~~ Carolina and shall meet requirements for membership under the Professional Boxing Safety Act of 1996. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of State. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(5) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

(6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The two nonvoting advisory members shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to

the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of State shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of State for cause. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of State.

(b) Vacancies. -- Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. -- Meetings of the Commission shall be called by the ~~chair~~ Executive Director, chair, or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. -- The Commission shall have the exclusive authority to approve and issue rules submitted by the Executive Director for the regulation of the conduct, promotion, and performances of live ~~boxing~~ boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.

(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. -- The Secretary of State shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the ~~Commission.~~ Executive Director. The Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission."

Section 3. G.S. 143-653 reads as rewritten:

"§ 143-653. Ultimate warrior matches prohibited.

Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude ~~boxing and kickboxing as regulated in this Article or~~ professional wrestling."

Section 4. G.S. 143-654 reads as rewritten:

"§ 143-654. Licensing and permitting.

(a) License and Permit Required. -- It is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State unless the promoter has a permit issued under this Article to do so. The Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. -- ~~A license issued under this Article must be renewed annually on or before January 1.~~ All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. -- An applicant for a promoter's license must submit, in addition to any other forms, documents, or ~~exhibits,~~ exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract between or among licensees related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Secretary of State and supplied by the Commission.

(d) Permit. -- A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require."

Section 5. G.S. 143-655 reads as rewritten:

"**§ 143-655. Fees; State Boxing Commission Revenue Account.**

(a) License Fees. -- The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall ~~not exceed~~ be the same as the initial license fees.

(b) Permit Fees. -- The Commission ~~may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:~~ shall collect the following permit fees:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 -- 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. -- There is created the State Boxing Commission Revenue Account within the Department of the Secretary of State. Monies collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

Section 6. G.S. 143-656 reads as rewritten:

"§ 143-656. Contracts and financial arrangements.

Any contract between ~~a boxer and any other licensee~~ licensees and ~~any contract involving~~ related to a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing."

Section 7. G.S. 143-657 is repealed.

Section 8. Article 68 of Chapter 143 of the General Statutes is amended by adding the following new section:

"§ 143-657.1. Sanctioned amateur matches.

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition."

Section 9. G.S. 143-658 reads as rewritten:

"§ 143-658. Violations.

(a) Civil Penalties. -- The ~~Commission~~ Executive Director may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. -- A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(c) Injunction. -- Whenever it appears to the ~~Commission~~ Executive Director that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the ~~Commission~~ Executive Director may ~~in its discretion~~ bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Enforcement. -- For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations

and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants."

Section 10. This act is effective when it becomes law.

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April 24, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 992 (NC Boxing Commission)

Senate Bill 992 amends the laws governing the North Carolina Boxing Commission and the regulation of boxing in this State.

The bill gives the Boxing Commission the authority to regulate amateur matches and "toughman" events and provides that the Commission's jurisdiction over boxing and boxing-related activities applies to events where admission is charged of spectators or a purse of $25.00 or more is involved. The bill redefines a "professional" (boxer) as a boxer licensed under the Federal Professional Boxing Safety Act of 1996. The bill also defines sanctioned amateurs, sanctioned amateur matches, toughman events, and toughman contestants.

All of the Boxing Commission members must meet the requirements for membership under the Professional Boxing Safety Act of 1996. The Commission is also authorized to adopt rules that include procedures and requirements for compliance with the federal Boxing Safety Act. The bill authorizes the Executive Director to contract for carrying out monitoring of events and certain other duties. The bill also clarifies that the bond required to be filed by an applicant for a boxing promotor's license is issued for the benefit of any person damaged by the promoter's failure to comply with the boxing laws or by the promoter's failure to fulfill its contractual obligations relating to holding a boxing event.

The bill also authorizes the Executive Director (currently, the Commission) to issue orders for civil penalties and to apply for injunctive relief against those violating the boxing laws.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 914

Short Title: Workers' Comp. Hospital Charges. (Public)

Sponsors: Senators Kerr; Cooper and Hoyle.

Referred to: Commerce.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE REIMBURSEMENT METHODOLOGY FOR HOSPITAL CHARGES UNDER WORKERS' COMPENSATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-26(b) reads as rewritten:

"(b) **(Effective June 30, 1997 -- see editor's note)** Hospital Fees. -- ~~Payment for medical compensation rendered by a hospital participating in the State Plan shall be equal to the payment the hospital receives for the same treatment and services under the State Plan. Payment for a particular type of medical compensation that is not covered under the State Plan shall be based on the allowable charge under the State Plan for comparable services or treatment, as determined by the Commission.~~ Each hospital subject to the provisions of this subsection shall be reimbursed the amount provided for in this subsection unless it has agreed under contract with the ~~insurer or managed care organization~~ insurer, managed care organization, employer (or other payor obligated to reimburse for inpatient hospital services rendered under this Chapter) to accept a different amount or reimbursement methodology.

Except as otherwise provided herein, payment for medical treatment and services rendered to workers' compensation patients by a hospital shall be equal to the payment the hospital is authorized to receive for the same treatment or service under the State Plan, provided that:

(1) Payment for inpatient hospital inpatient services provided on or after July 1, 1997, and on or before December 31, 1997, shall not be less than a minimum of ninety percent (90%) nor more than a

North Carolina General Assembly
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April 24, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 914 (Workers Comp. Hospital Charges)

Senate Bill 914 revises the method by which hospitals are reimbursed for treatment and care rendered to workers' compensation patients. The bill addresses a problem that arose a little over a year ago with self-insured employers and the impact of the hospital reimbursement methodology on those employers. A temporary solution was enacted last year but expires June 30th of this year. This bill extends and modifies that solution.

When the Workers' Compensation Reform Act of 1994 (SB 906) was enacted, it tied hospital reimbursement for workers' compensation payments to the same reimbursement those hospitals received under the State Health Plan. When the State Health Plan went to a diagnostic related grouping (DRG) reimbursement system for hospital reimbursement over a year ago, the workers' compensation reimbursement system was also switched to a DRG system. Under the DRG system, a hospital is reimbursed primarily on the basis of the diagnosis of the patient, not the actual itemized charges that are calculated based on how long the patient stays in the hospital. The reimbursement is reduced some for each unusually short inpatient stay, and it is increased some for each unusually long inpatient stay. Most insurers have a large enough mix of cases so that the DRG system does not adversely effect them. However, self-insured employers who must pay their injured employees' medical bills under workers' compensation may not have this type of case mix and may end up with bills that exceed the hospital's actual itemized charges.

Legislation enacted last year addressed this by creating a "risk corridor" under which the self-insured employers would not pay more under the DRG system than the actual charges and the hospitals would not be reimbursed less than 90% of those

charges. However, this legislation expires June 30, 1997. Senate Bill 914 re-establishes this 90/100 risk corridor for the remainder of this year. The corridor would be adjusted in future years by the Industrial Commission to produce a discount for the payors (insurers and self-insured employers) that is equal to the discount received under the State Health Plan. In modifying the risk corridor, the Industrial Commission would follow more formal requirements for giving notice of its proposed modification. The Commissions' modification would be subject to judicial review.

VISITOR REGISTRATION SHEET

Senate Commerce — 4/24/97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
John Hagan	Hydro Dyne Industries
Bruce Cox	Cox Lake Hydroelectric
Bernard Allen	SOS
Chris Nelson	NC Bankers Assn
Carolyn Lee	NC Electric Membership Corp.
Paul Mahoney	NC Bankers Assn
Nelle Hotchkiss	NC Electric coops -
Robert Schwentker	NC Elec. Cooperatives
Chris Hoyt	NC Elec. Co-ops
Gordon Allen	NC Bankers Assn.
Paul Stock	" " "
Jim Blackburn	NC Assoc. County Comm's
Rob Schofield	NCCJCDC
Steve Moore	NC Med Soc
[illegible]	Manning Fulton & Skinner PA
Steve Cook	Small Power Producers
[illegible]	NCAFI
Andrew C Ivey	Cardinal Energy Services Inc
Lucia Peel	NC Medical Society
Hugh Tilson	NCHA
Evelyn Hawthorne	NCHA

VISITOR REGISTRATION SHEET

Senate Commerce — 4/24/97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Brenda Dougherty	Sprint
Henry Jones	Attorney - Raleigh
FRAN PRESTON	NCRMA
DON McCORQUODALE	NCRMA
NATURE	NCMA
Curt Williams	Gov's Office
Alice Garland	Electricities
Anne Dunn	NCSA
RANDY BARNES	DUKE

MINUTES
SENATE COMMERCE COMMITTEE
April 24, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building on Thursday, April 24, 1997, at 11:00 a.m. Sixteen members were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Sen. R. C. Soles, Jr., Chairman, called the meeting to order.

The following bills were considered by the Committee:

SB 966 - AN ACT TO MAKE NO DAMAGE FOR DELAY CAUSES IN PUBLIC CONTRACTS UNENFORCEABLE.

Sen. Miller, bill sponsor, was recognized to explain the bill. Sen. Hoyle moved to give the bill a favorable report. The motion carried.

SB 996 - AN ACT TO EXEMPT FROM THE PLUMBING LICENSURE REQUIREMENTS CERTAIN PERSONS PERFORMING ON-SITE ASSEMBLY OF FACTORY DESIGNED DRAIN SYSTEMS UNDEERNEATH MANUFACTURED HOMES.

Sen. Warren, bill sponsor, was recognized to explain the bill. Sen. Warren moved to give the bill a favorable report. The motion carried.

SB 408 - AN ACT TO ENHANCE, ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY GENERATED BY SMALL POWER PRODUCERS OF FIVE MEGAWATTS OR LESS BY PROVIDING THAT AVOIDED COSTS TO A UTILITY FROM THAT ENERGY BE CALCULATED BY THE RESIDUAL REVENUE METHOD.

At the request of Sen. Bob Shaw, bill sponsor, Mr. Steve Cook, Small Power Producers, explained this bill to the committee. A proposed committee substitute was sent forth and Steve Rose, Committee Counsel, explained the proposed committee substitute to the committee. There was much discussion and questions by members of the committee. Sen. Rand made a motion to place the bill in a sub-committee to report back on Tuesday. The motion carried.

Sen. Rand, Chairman
Sen. Hoyle

Sen. Bob Shaw
Sen. Ballantine

SB 973 - AN ACT TO REQUIRE HEALTH MAINTENANCE ORGANIZATIONS TO PROVIDE CERTAIN INFORMATION.

Sen. Winner, bill sponsor, was recognized to explain the bill. Sen. Hoyle sent forth an amendment and moved that it be adopted, motion carried.

Sen. Rand made a motion to adjourn, motion carried.

Sen. R. C. Soles, Jr. Chairman

Janet Blalock, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
SEN. R. C. SOLES, JR., Chairman

Thursday, April 24, 1997

SEN. R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **966** No Damage for Delay Unenforceable
Sequential Referral: none
Recommended Referral: none

S.B. **996** Plumbing License Exemption
Sequential Referral: none
Recommended Referral: none

TOTAL REPORTED: 2

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Monday, April 28, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **994** No Direct ABC Shipments-Consumers.

Draft Number:	PCS4588
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 966

Short Title: No Damage for Delay Unenforceable. (Public)

Sponsors: Senator Miller.

Referred to: Commerce.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE NO DAMAGE FOR DELAY CLAUSES IN PUBLIC CONTRACTS UNENFORCEABLE.

The General Assembly of North Carolina enacts:

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

"**§ 143-134.2. No damage for delay clause.**

No contractual language limiting compensable damages for delays caused by the owner may be enforced in any construction contract let by any board or governing body of the State, or of any institution of State government, or of any county, city, town, or other political subdivision thereof."

Section 2. This act is effective when it becomes law and applies to construction contracts entered into after that date.

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April 24, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 966 (No Damage for Delay Unenforceable)

Senate Bill 966 provides that a contractual provision limiting the compensatory damages that can be obtained against a public owner for delaying completion of a public construction project is unenforceable.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 996

Short Title: Plumbing License Exemption. (Public)

Sponsors: Senators Warren; and Albertson.

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM THE PLUMBING LICENSURE REQUIREMENTS CERTAIN PERSONS PERFORMING ON-SITE ASSEMBLY OF FACTORY DESIGNED DRAIN SYSTEMS UNDERNEATH MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

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

"**§ 87-21. Definitions; contractors licensed by Board; examination; posting license, etc.**

(a) Definitions. -- For the purpose of this Article:

(1) The word 'plumbing' is hereby defined to be the system of pipes, fixtures, apparatus and appurtenances, installed upon the premises, or in a building, to supply water thereto and to convey sewage or other waste therefrom.

(2) The phrase 'heating, group number one' shall be deemed and held to be the heating system of a building, which requires the use of high or low pressure steam, vapor or hot water, including all piping, ducts, and mechanical equipment appurtenant thereto, within, adjacent to or connected with a building, for comfort heating.

(3) The phrase 'heating, group number two' means an air conditioning system which consists of an assemblage of interacting components producing conditioned air for comfort cooling by the lowering of temperature, and having a mechanical refrigeration capacity in excess of fifteen tons, and which circulates air.

(4) The phrase 'heating, group number three' shall be deemed and held to be a direct heating system of a building which produces heat to raise the temperature of the space within the building for the purpose of comfort in which electric heating elements or products of combustion exchange heat either directly with the building supply air or indirectly through a heat exchanger and using an air distribution system of ducts. A heating system requiring air distribution ducts and supplied by ground water or utilizing a coil supplied by water from a domestic hot water heater not exceeding 150 Fahrenheit requires either plumbing or heating group number one license to extend piping from valved connections in the domestic hot water system to the heating coil and requires either heating group number one or heating group number three license for installation of coil, duct work, controls, drains and related appurtenances.

(5) Any person, firm or corporation, who for a valuable consideration, (i) installs, alters or restores, or offers to install, alter or restore, either plumbing, heating group number one, or heating group number two, or heating group number three, or (ii) lays out, fabricates, installs, alters or restores, or offers to lay out, fabricate, install, alter or restore fire sprinklers, or any combination thereof, as defined in this Article, shall be deemed and held to be engaged in the business of plumbing, heating, or fire sprinkler contracting; provided, however, that nothing herein shall be deemed to restrict the practice of qualified registered professional engineers. Any person who installs a plumbing, heating, or fire sprinkler system on property which at the time of installation was intended for sale or to be used primarily for rental is deemed to be engaged in the business of plumbing, heating, or fire sprinkler contracting without regard to receipt of consideration, unless exempted elsewhere in this Article.

(6) The word 'contractor' is hereby defined to be a person, firm or corporation engaged in the business of plumbing, heating, or fire sprinkler contracting.

(7) The word 'heating' shall be deemed and held to mean heating group number one, heating group number two, heating group number three, or any combination thereof.

~~(8) The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required.~~

(9) The word 'Board' means the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors.

(10) The word 'experience' means actual and practical work directly related to the category of plumbing, heating group number one,

heating group number two, heating group number three, or fire sprinkler contracting, and includes related work for which a license is not required.

(11) The phrase 'fire sprinkler' means an automatic or manual sprinkler system designed to protect the interior or exterior of a building or structure from fire, and where the primary extinguishing agent is water. These systems include wet pipe and dry pipe systems, preaction systems, water spray systems, foam water sprinkler systems, foam water spray systems, nonfreeze systems, and circulating closed-loop systems. These systems also include the overhead piping, combination standpipes, inside hose connections, thermal systems used in connection with the sprinklers, tanks, and pumps connected to the sprinklers, and controlling valves and devices for actuating an alarm when the system is in operation. This subsection shall not apply to owners of property who are building or improving farm outbuildings. This subsection shall not include water and standpipe systems having no connection with a fire sprinkler system. Nothing herein shall prevent licensed plumbing contractors, utility contractors, or fire sprinkler contractors from installing underground water supplies for fire sprinkler systems.

(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. -- In order to protect the public health, comfort and safety, the Board shall establish two classes of licenses: Class I covering all plumbing, heating, and fire sprinkler systems for all structures, and Class II covering plumbing and heating systems in single-family detached residential dwellings. The Board shall prescribe the standard of competence, experience and efficiency to be required of an applicant for license of each class, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards, and related subjects as these subjects pertain to plumbing, heating, or fire sprinkler systems. The examination for a fire sprinkler contractor's license shall include such materials as would test the competency of the applicant and which may include the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET).

As a result of the examination, the Board shall issue a certificate of license of the appropriate class in plumbing, heating, or fire sprinkler contracting, and a license shall be obtained, in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof. <u>The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required.</u> The Board may require experience as a condition of examination, provided

that (i) the experience required may not exceed two years, (ii) that up to one-half the experience may be in the form of academic or technical courses of study, and (iii) that registration is not required at the commencement of the period of experience. Conditions of examination set by the Board shall be uniformly applied to each applicant within each license classification. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, and may provide an examination for fire sprinkler contracting or may accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout. The Board is authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group number two, or heating group number three, or fire sprinkler contracting, or any combination thereof.

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

(c) To Whom Article Applies. -- The provisions of this Article shall apply to all persons, firms, or corporations who engage in, or attempt to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof as defined in this Article. The provisions of this Article shall not apply to those who make minor repairs or minor replacements to an already installed system of plumbing or heating, but shall apply to those who make repairs, replacements, or modifications to an already installed fire sprinkler system.

(c1) Exemption. -- The provisions of this Article shall not apply to a person who performs the on-site assembly of a factory designed drain line system for a manufactured home, as defined in G.S. 143-143.9(6), if the person is a licensed manufactured home retailer, a licensed manufactured home set-up contractor, or an employee of either, and the person performs the assembly according to factory instructions. The assembly of the drain system shall be approved by a local building inspector.

(d) Repealed by Session Laws 1979, c. 834, s. 7.

(d1) Expired.

(e) Posting License; License Number on Contracts, etc. -- The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities. The initial qualified licensee on a license is the permanent possessor of the license number under which that license is issued, except that a licensee, or the licensee's legal agent, personal representative, heirs or assigns, may designate in writing to the Board a qualified licensee to whom the Board shall assign the license number upon the payment of a ten dollar ($10.00) assignment fee. Upon such assignment, the qualified licensee becomes the permanent possessor of the assigned license number. Notwithstanding the foregoing, the license number may be assigned only to a qualified licensee who has been employed by the initial licensee's plumbing and heating company for at least 10 years or is a lineal relative, sibling, first cousin, nephew, niece, daughter-in-law, son-in-law, brother-in-law, or sister-in-law of the initial licensee. Each successive licensee to whom a license number is assigned under this subsection may assign the license number in the same manner as provided in this subsection.

(f) Repealed by Session Laws 1971, c. 768, s. 4.

(g) The Board may, in its discretion, grant to plumbing, heating, or fire sprinkler contractors licensed by other states license of the same or equivalent classification without written examination upon receipt of satisfactory proof that the qualifications of such applicants are substantially equivalent to the qualifications of holders of similar licenses in North Carolina and upon payment of the usual license fee.

(h) Expired."

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

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April 24, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 996 (Plumbing License Exemptions)

Senate Bill 996 exempts from the plumbing license requirement a person who performs the on-site assembly of a factory-designed drain line system for a manufactured home as long as the person (1) is licensed as a manufactured home retailer or set-up contractor or is an employee of one of these licensees and (2) assembles the system according to factory instructions. The assembly must be approved by the local building inspector.

This bill takes effect upon becoming law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 408

Short Title: Renewable Resource Energy. (Public)

Sponsors: Senators Shaw of Guilford and Cochrane.

Referred to: Commerce.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE, ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY GENERATED BY SMALL POWER PRODUCERS OF FIVE MEGAWATTS OR LESS BY PROVIDING THAT AVOIDED COSTS TO A UTILITY FROM THAT ENERGY BE CALCULATED BY THE RESIDUAL REVENUE METHOD.

Whereas, it is in the public interest to encourage small business development in the area of electric energy generation and to enhance the continued economic feasibility of the production of renewable energy at small power production facilities producing five megawatts or less of electricity; and

Whereas, the operation of such small power production facilities helps to curtail the need for facilities operating on fossil fuels; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-156 reads as rewritten:

"**§ 62-156. Power sales by small power producers to public utilities.**

(a) In the event that a small power producer and an electric utility are unable to mutually agree to a contract for the sale of electricity or to a price for the electricity purchased by the electric utility, the commission shall require the utility to purchase the power, under rates and terms established as provided in subsection (b) of this section.

(b) No later than March 1, 1981, and at least every two years thereafter, the commission shall determine the rates to be paid by electric utilities for power

purchased from small power producers, other than those producers described in subsection (c) of this section, according to the following standards:

(1) Term of Contract. -- Long-term contracts for the purchase of electricity by the utility from small power producers shall be encouraged in order to enhance the economic feasibility of small power production facilities.

(2) Avoided Cost of Energy to the Utility. -- The rates paid by a utility to a small power producer shall not exceed, over the term of the purchase power contract, the incremental cost to the electric utility of the electric energy which, but for the purchase from a small power producer, the utility would generate or purchase from another source. A determination of the avoided energy costs to the utility shall include a consideration of the following factors over the term of the power contracts: the expected costs of the additional or existing generating capacity which could be displaced, the expected cost of fuel and other operating expenses of electric energy production which a utility would otherwise incur in generating or purchasing power from another source, and the expected security of the supply of fuel for the utilities' alternative power sources.

(3) Availability and Reliability of Power. -- The rates to be paid by electric utilities for power purchased from a small power producer shall be established with consideration of the reliability and availability of the power.

(c) The rates paid by a utility to a small power producer producing five megawatts of electricity or less at the same site and at dams in existence prior to 1997, shall be determined by using the residual revenue method as follows: by deducting from the Commission's approved residential retail rate for electricity for the applicable utility a billing and distribution charge, not to exceed ten percent (10%) of the retail rate, and a handling charge, not to exceed twelve percent (12%) of the retail rate. The result of this calculation shall be the avoided cost to the utility. The percentage deduction for the billing and distribution charge and the handling charge may be established by agreement between the small power producer and the utility for a period of up to 15 years, but the rate paid by a utility shall fluctuate as the Commission's approved residential rate for electricity for the receiving utility fluctuates."

Section 2. This act is effective when it becomes law and applies to contracts entered into on or before January 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 408
Proposed Committee Substitute S408-CSLL-001A

Short Title: Renewable Resource Energy. (Public)

Sponsors:

Referred to: Commerce.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE, ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY GENERATED BY MINOR POWER PRODUCERS OF FIVE MEGAWATTS OR LESS BY DIRECTING THE UTILITIES COMMISSION TO ADOPT RULES ALLOWING RESIDENTIAL ELECTRIC CONSUMERS AND ELECTRIC COOPERATIVES TO PURCHASE POWER DIRECTLY FROM THOSE PRODUCERS AND TO PROVIDE FOR A PERCENTAGE OF THE PROCEEDS OF THOSE PURCHASES TO BE DEPOSITED INTO THE CLEAN WATER MANAGEMENT TRUST FUND.

Whereas, it is in the public interest to encourage small business development in the area of electric energy generation and to enhance the continued economic feasibility of the production of renewable energy at power production facilities producing five megawatts or less of electricity; and

Whereas, the operation of such power production facilities helps to curtail the need for facilities operating on fossil fuels; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3 is amended by adding a new subdivision to read:

"(16b) 'Minor power producer' means a person or corporation owning or operating a hydroelectric production facility using

renewable resource energy with a power production capacity that does not exceed 5 megawatts of electricity, and located at a dam existing prior to January 1, 1997."

Section 2. G.S. 62-3(23) is amended by adding a new sub-subdivision to read:

"k. The term 'public utility' shall not include a minor power producer as defined in subdivision (16b) of this section."

Section 3. Article 3 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-53. Electricity directly from minor power producers.**

(a) The Commission shall adopt rules allowing residential electric consumers and electric cooperatives to purchase electric power generated by minor power producers directly from those producers. The Commission shall inform the general public of the availability of electric power directly from minor power producers.

(b) Rules adopted under this section shall require a public utility furnishing electric service to effect delivery of electric power produced by minor power producers with which the utility is interconnected to residential electric consumers or electric membership corporations and to charge those minor power producers just and reasonable fees for connection to the public utility's grid. This connection shall include metering of facilities necessary to measure in kilowatt hours the amount of power delivered to the utility grid by the minor power producer, payment of administrative costs directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operation with the minor power producer, to the extent that those costs exceed the costs the public utility would have incurred in the absence of the minor power producer, and transmission, distribution, delivery, safety provisions, and other matters necessary to implement this section. The Commission shall determine the amount of and schedule for payments of interconnection costs, but the fee for interconnection shall not exceed eighteen percent (18%) of the sale price of the electrical energy delivered by the public utility. Two percent (2%) of the sale price of the electrical energy produced by the minor power producer and delivered by the public utility shall be paid quarterly by the minor power producer to the State Treasurer for deposit in the Clean Water Management Trust Fund established in G.S. 113-145.3.

(c) A minor power producer may petition the Commission to establish the terms and conditions of interconnection with a public utility furnishing electric service. The Commission shall require the public utility to provide specifications sufficiently detailed to permit construction of the interconnection facility to a reasonable standard or instruct the public utility to accomplish the interconnection. The design and cost of the interconnection may not be discriminatory in relation to other interconnection facilities of similar capacity and purpose. The cost of interconnection equipment and its installation shall be paid by the minor power producer requesting the interconnection.

(d) The sale price per kilowatt hour of electric power produced by a minor power producer and sold to a residential consumer shall be equal to the system-wide, average annual price approved by the Commission, including all ancillary charges, of residential electric power per kilowatt hour paid by residential consumers for the applicable utility. The sale price per kilowatt hour of electric power produced by a minor power producer and sold to an electric membership corporation shall be a negotiated price agreed upon by the purchasing electric membership corporation and the small power producer."

Section 4. This act is effective when it becomes law

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 973

Short Title: HMO Info. (Public)

Sponsors: Senators Winner; Allran, Gulley, Hartsell, Perdue, and Rand.

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HEALTH MAINTENANCE ORGANIZATIONS TO PROVIDE CERTAIN INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-67-50 is amended by adding the following new subsection to read:

"(f) Every health maintenance organization shall annually, on or before the first day of March of each year, file in the office of the Commissioner the following information:

(1) The number of and reasons for complaints received by the health maintenance organization;

(2) The number of enrollees who disenrolled from the HMO for any reason;

(3) The number of provider contracts that were terminated in the preceding year and the reasons for termination. This information shall include the number of providers leaving the plan and the number of new providers;

(4) Utilization data that includes statistics relating to the utilization, quality, availability, and accessibility of services, as defined by the Commissioner; and

(5) Aggregate financial compensation data, including the percentage of providers paid under a capitation arrangement, discounted fee-for-service or salary, the services included in the capitation payment, and the range of compensation paid by withhold or incentive

payments. This information shall be submitted on a form prescribed by the Commissioner."

Section 2. Article 67 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-67-51. Disclosure of certain information required.**

Every health maintenance organization shall provide the following information to enrollees and prospective enrollees, upon request:

(1) The evidence of coverage required under G.S. 58-67-50;

(2) The health maintenance organization's utilization review criteria or treatment protocol used to determine the medical necessity of a specific procedure or treatment;

(3) The health maintenance organization's drug formulary; and

(4) The health maintenance organization's determination of whether a specified procedure, test, or treatment is experimental."

Section 3. This act becomes effective October 1, 1997.

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Legislative Services Office

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April 24, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 973 (HMO Information)

Senate Bill 973 requires each HMO in this State to annually file with the Commissioner of Insurance the following information:

(1) The number of complaints it has received and the reasons for those complaints
(2) The number of persons who left the HMO
(3) The number of contracts terminated with physicians and other providers and the reasons for the termination, including the number of providers leaving the plan and the number of new providers.
(4) Data on utilization, quality, availability of services, and accessibility of services, as defined by the Commissioner
(5) Aggregate financial compensation data for providers

Each HMO must also disclose to its enrollees and applicants for enrollment the evidence of coverage, its utilization review criteria for determining medical necessity for a particular treatment, its drug formulary, and its determination whether certain treatments are experimental.

This bill would take effect October 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

11:00 AM

VISITOR REGISTRATION SHEET

Senate Commerce — 4/24/97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Bernard Allen	Secy. of State
Sheila H. McKinney	N.C. Dept. of Ins.
John Hagan	Hydro Dunn Industries
Stuart Dixon	N.C. Natural Gas Corp.
Henry A Landsberger	AARP / NC Health Care Coalition
Steve Cook	Small Hydro
John Henderson	Small Hydro
Betty H. Landsberger	AARP-NC Health Care Coal.
Polly Williams	NC Equity / AARP
Harold Webb	Johnson et al
Samuel Johnson	Atty
Sandy Sanders	WRAL
Lew Bowman	Wendell Carlyle SR
Brenda Dougherty	Sprint
Jimmy Hicks	Carolinas Healthcare System
Carmen Hooker Buncell	Carolinas Healthcare System
Bruce Cox	Cane Lake Hydro Partners
Gary Walker	ALLTEL
McNeil Chestnut	Atty. Gen.'s Office
Jim Lofton	NCAFL
[illegible]	NCBA
Paul Stock	NC Bankers Assn.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Evelyn K. Dowdell	AARP - State Leg Committee
George Reed	NC Council of Churches
Steve Keller	NC Med Soc.
Lucia Deel	NC Med Society
Amy Jo Bain	Smith Anderson
Guy Bowling	NC Dept. Secretary of State
Mike Allen	Carbonton Hydro Inc.
Nancy Bradley	NCCPAU
Linda Hunt	
Jane Mahoney	NC Hsng Assn
[illegible]	NC Hsg
Stan Williams	VHC of NC
[illegible]	Moore & Van Allen
Tonya Richards	Electricities
Lynn Holmes	BellSouth
Mary Sherman	APT
Becky Brown	Labor
Jim Taylor	"
[illegible]	ECRC
Richard C. Hatch	AARP
Chris Heagarty	Electric Coops

MINUTES
SENATE COMMERCE COMMITTEE
April 29, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building on Tuesday, April 29, 1997, at 11:00 a.m. Twenty-one members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles, Chairman, called the meeting to order.

The following bills were considered by the Committee:

SB 417, AN ACT TO ELIMINATE THE BONDING REQUIREMENTS FOR PUBLIC CONTRACTS WITH A VALUE OF ONE MILLION DOLLARS OR LESS.

Senator Soles said a Committee Substitute was being prepared on S. B. 417, which applies to DOT Contracts only, and it limits the low bid contracts to $500,000. The Committee Substitute requires that the Secretary of Transportation report quarterly to the Joint Legislative Transportation Oversight Committee. The Chairman asked for the Committee's support of the substitute. Senator Hoyle said he felt the Department of Transporation was well able to handle these contracts, and he moved the adoption of the Committee Substitute and that it be given a favorable report. Motion carried.

SB 869, AN ACT TO TRANSFER STATE INFORMATION PROCESSING SERVICES, STATE TELECOMMUNICATIONS SERVICES, AND THE INFORMATION RESOURCE MANAGEMENT COMMISSION FROM THE STATE CONTROLLER AND CENTER FOR GEOGRAPHIC INFORMATION AND ANALYSIS (GEODETIC SURVEY), AND BOARD OF SCIENCE AND TECHNOLOGY TO ANOTHER DEPARTMENT.

Senator Rand, the bill sponsor, sent forward a Committee Substitute for SB 869 and moved its adoption. Motion carried. Senator Rand said the legislation authorizes moving SIPS from the Controllers Office to the Department of Commerce. Secretary Tolson, Department of Commerce, spoke briefly about the transfer and said the Governor had requested it and he is supportive of that request. (See attached memo for additional information on the bill.)

Senator Warren moved that the Committee Substitute for Senate Bill 869 be given a favorable report. Motion carried.

SB 919, AN ACT TO REQUIRE DISCONTINUATION OF TELECOMMUNICATIONS SERVICES USED FOR UNLAWFUL PURPOSES.

Senator Odom, the bill sponsor, said the legislation does essentially what the title indicates. Senator Kerr moved that S. B. 919 be given a favorable report. Motion carried.

SB 361, AN ACT TO EXPAND THE AUTHORIZED USERS AND USES OF THE NORTH CAROLINA INFORMATION HIGHWAY.

Senator Cooper, the bill sponsor, sent forward a Committee Substitute for SB 361, and moved its adoption. Motion carried. He said the bill expands the authorized users of the North Carolina Information Highway to include private nonprofit corporations that are formed to establish public access networks on a regional basis for North Carolina citizens to assist State and local governments. It also permits authorized users of these services at educational institutions to permit their classrooms to be rented for the use of these services by private, non-profit entities, for civic and educational uses which serve a public purpose.

Senator Rand sent forward an amendment (copy attached) and moved its adoption. Motion carried. Senator Warren then moved that the Committee Substitute for SB 361, as amended, be given a favorable report.

Ms. Brenda Doughertry with SPRINT assisted in answering questions on the legislation.

SB 1027, AN ACT TO MODIFY THE HIGH-VOLTAE LINE SAFETY ACT.

Senator Reeves moved the adoption of the Committee Substitute for SB 1027 offered by the sponsor. Motion carried.

Senator Miller explained the Committee Substitute saying for public contracts the cost of moving lines will be on the property owner. He said the Department of Labor supports the change.

Senator Plyler moved that the Committee Substitute for SB 1027 be given a favorable report. Motion carried.

SB 973, AN ACT TO REQUIRE HEALTH MAINTENANCE ORGANIZATIONS TO PROVIDE CERTAIN INFORMATION.

Senator Winner explained the bill and said it was a high priority of AARP. Others in favor of the bill are the Older Women's League, N. C. Health Access, N. C. Medical Society and the Department of Insurance. Mr. Brad Adock of Blue Cross/Blue Shield and Mr. Bob Price with the Association of Life Insurance Companies opposed the bill.

Senator Hoyle suggested an amendment to the bill. (Copy attached.) Senator Kincaid spoke in favor of the amendment. After some discussion, the sponsor requested that the bill be temporarily displaced so that additional work could be done on a Committee Substitute. The Chairman asked that this be done.

SB 930, AN ACT TO ABOLISH THE MUTUAL BURIAL ASSOCIATION COMMISSION AND TO TRANSFER ITS DUTIES TO THE BOARD OF MORTUARY SCIENCE.

Senator R. L. Martin, the sponsor, explained the bill. (See copy of memorandum for full explanation.) Senator Rand moved that S. B. 930 be given a favorable report. Motion carried.

SB 1044, AN ACT TO ALLOW PRIVATE PERSONNEL SERVICES TO CHARGE APPLICANTS A REGISTRATION FEE AND TO REQUIRE THAT SUCH SERVICES POST A SECURITY BOND COVERING THE REFUND OF REGISTRATION FEES WITH THE DEPARTMENT OF LABOR.

Senator Dalton, the bill sponsor, said the legislation authorizes personnel services to charge their applicants a registration fee for information or services that may lead to employment for the applicant. Mr. Danny Cope representing the Department of Labor indicated that if the bill passes, the Department would need to hire an additional investigator. Mr. Lacey Mattox, also with the Department of Labor, assisted in answering questions.

Senator Dalton moved that SB 1044 be given a favorable report. The motion failed.

SB 866, AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN THE PURCHASE OF PRESCRIPTION DRUGS AND PHARMACEUTICAL SERVICES.

Senator Rand, the bill sponsor, sent forward a Committee Substitute for SB 866 and moved its adoption. Motion carried. (See attached memorandum for full explanation of the bill.)

Ms. Evelyn Brendle, Vice-Chairman of the AARP Legislative Committee, spoke in opposition to the bill saying it would raise the cost of prescriptions. Also speaking against the bill were Mr. Julian Philpott with Farm Bureau; Mr. Bryan Washington, NCAE; and Mr. Harry Kaplan with Kaiser Permanente.

Mr. Michael James, N. C. Pharmaceutical Association, spoke in favor of the bill.

Ms. Leslie Bavacqua, representing the N. C. Citizens for Business and Industry, said her group had some concerns about the bill.

Ms. Fran Preston, N. C. Retail Merchants Association, said the Association supports the bill.

Senator Rand moved that the Committee Substitute for SB 866 be given a favorable report. Motion carried.

The meeting adjourned at 12:30 p.m.

Senator R. C. Soles, Jr. Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, April 29, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **919** Unlawful telecommunications.
Sequential Referral: None
Recommended Referral: None

S.B. **930** Abolish Burial Commission.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **417** Public Contract Bonding Req'ments.
Draft Number: PCSA748
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **866** Prescription Drugs/Competition.
Draft Number: PCS8687
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **869** Information Transfer
Draft Number: PCSA735
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1027** Amend Voltage Safety Act.
Draft Number: PCS7785
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE

S.B. **1044** Private Personnel Services Fees.

TOTAL REPORTED: 7

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 417

Short Title: Public Contract Bonding Req'ments. (Public)

Sponsors: Senators Shaw of Cumberland, Ballance; and Jordan.

Referred to: Commerce.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE BONDING REQUIREMENTS FOR PUBLIC CONTRACTS WITH A VALUE OF ONE MILLION DOLLARS OR LESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129(b) reads as rewritten:

"(b) Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal for a contract with a value of more than one million dollars ($1,000,000) shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. No deposit or bid bond shall be required when the contract has a value of one million dollars ($1,000,000) or less. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. ~~In the case of proposals in an estimated amount of less than one hundred thousand dollars ($100,000) for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.~~

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor."

Section 2. G.S. 143-129(c) reads as rewritten:

"(c) All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made for a contract with a value of more than one million dollars ($1,000,000) to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, said board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body ~~may~~ shall waive the requirement for a surety bond or other ~~deposit.~~ deposit when the contract has a value of one million dollars ($1,000,000) or less.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days."

Section 3. G.S. 44A-26(a) reads as rewritten:

"(a) When the total amount of construction contracts awarded for any one project exceeds one ~~hundred thousand~~ million dollars ~~($100,000)~~ ($1,000,000) a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any ~~contractor with a contract more than fifteen thousand dollars ($15,000).~~ contractor. In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

(1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body which awarded the contract.

(2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the

protection of the persons furnishing materials or performing labor for which a contractor or subcontractor is liable.

No bonds shall be required from a contractor on a contract with a value of one million dollars ($1,000,000) or less."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 417
Proposed Committee Substitute S417-PCSA748

Short Title: Highway Contract Bonding Req'ments. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING HIGHWAY SMALL PROJECT BIDDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-28.10 reads as rewritten:

"**§ 136-28.10. Highway Fund and Highway Trust Fund Small Project Bidding.**

(a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or Highway Trust Fund projects of ~~three hundred thousand dollars ($300,000)~~ five hundred thousand dollars ($500,000) or less, the Board of Transportation may, after soliciting at least three informal bids in writing from Small Business Enterprises, award contracts to the lowest responsible bidder. The Department of Transportation may identify projects likely to attract increased participation by Small Business Enterprises, and restrict the solicitation and award to those bidders. The Board of Transportation may delegate full authority to award contracts, adopt necessary rules, and administer the provisions of this section to the Secretary of Transportation.

(b) The letting of contracts under this section is not subject to any of the provisions of G.S. 136-28.1 relating to the letting of contracts. The Department may waive the bonding requirements of Chapter 44A of the General Statutes and the licensing requirements of Chapter 87 for contracts awarded under this section.

(c) The Secretary of Transportation shall report quarterly to the Joint Legislative Transportation Oversight Committee on the implementation of this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 869

Short Title: Information Transfer. (Public)

Sponsors: Senators Rand; Conder, Perdue, Plyler, and Soles.

Referred to: Commerce.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO TRANSFER STATE INFORMATION PROCESSING SERVICES, STATE TELECOMMUNICATIONS SERVICES, AND THE INFORMATION RESOURCE MANAGEMENT COMMISSION FROM THE STATE CONTROLLER AND CENTER FOR GEOGRAPHIC INFORMATION AND ANALYSIS (GEODETIC SURVEY), AND BOARD OF SCIENCE AND TECHNOLOGY TO ANOTHER DEPARTMENT.

The General Assembly of North Carolina enacts:

Section 1. This act transfers State Information Processing Services, State Telecommunications Services, and the Information Resource Management Commission from the State Controller and Center for Geographic Information and Analysis (Geodetic Survey), and Board of Science and Technology to another department.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 869
Proposed Committee Substitute S869-PCSA735

Short Title: Transfer Technology Functions. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO TRANSFER TECHNOLOGY-RELATED FUNCTIONS OF STATE GOVERNMENT TO THE DEPARTMENT OF COMMERCE.

The General Assembly of North Carolina enacts:

Section 1. (a) The following agencies, including all functions, powers, and duties of each, are transferred from the Office of State Controller to the Department of Commerce:

(1) Information Resource Management Commission.

(2) State Information Processing Services.

(3) State Telecommunications Services.

(b) Budgetary responsibilities for the agencies and services listed in subsection (a) of this section are transferred from the Office of State Controller to the Department of Commerce. The positions, funds, equipment, supplies, records, and other property to support the functions transferred by this section are also transferred from the Office of State Controller to the Department of Commerce. Any disputes arising out of this transfer shall be resolved by the Director of the Budget.

Section 2. Part 23 of Article 9 of Chapter 143B of the General Statutes is recodified as Part 16 of Article 10 of Chapter 143B of the General Statutes, to be entitled "Information Technology Related State Government Functions", and G.S. 143B-426.21 is recodified as G.S. 143B-472.41.

Section 3. G.S. 143B-426.39(14), (15), and (16) are recodified as G.S. 143B-472.42(1), (2), and (3).

Section 4. G.S. 143B-426.39A is recodified as G.S. 143B-472.43.

Section 5. G.S. 143B-426.40 is recodified as G.S. 143B-472.44.

Section 6. Part 16 of Article 10 of Chapter 143B of the General Statutes, as created by this act, reads as rewritten:

"Part 16. Information Technology Related Functions.

"**§ 143B-472.41. Information Resource Management Commission.**

(a) Creation; Membership. -- The Information Resource Management Commission is created in the ~~Office of the State Controller.~~ Department of Commerce. The Commission consists of the following members:

(1) Four members of the Council of State, appointed by the Governor.
(2) The Secretary of Administration.
(3) The State Budget Officer.
(4) Two members of the Governor's cabinet, appointed by the Governor.
(5) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
(6) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
(7) The Chair of the Governor's Committee on Data Processing and Information Systems.
(8) The Chair of the State Information Processing Services Advisory Board.
(9) The Chair of the Criminal Justice Information Network Governing Board.

Members of the Commission shall not be employed by or serve on the board of directors or other corporate governing body of any information systems, computer hardware, computer software, or telecommunications vendor of goods and services to the State of North Carolina.

The two initial cabinet members appointed by the Governor and the two initial citizen members appointed by the General Assembly shall each serve a term beginning September 1, 1992, and expiring on June 30, 1995. Thereafter, their successors shall be appointed for four-year terms, commencing July 1. Members of the Governor's cabinet shall be disqualified from completing a term of service of the Commission if they are no longer cabinet members.

The appointees by the Governor from the Council of State shall each serve a term beginning on September 1, 1992, and expiring on June 30, 1993. Thereafter, their successors shall be appointed for four-year terms, commencing July 1. Members of the Council of State shall be disqualified from completing a term of service on the Commission if they are no longer members of the Council of State.

Vacancies in the two legislative appointments shall be filled as provided in G.S. 120-122.

The Commission chair shall be elected in the first meeting of each calendar year from among the appointees of the Governor from the Council of State and shall serve a term of one year. The Secretary of ~~Administration~~ Commerce shall be secretary to the Commission.

No member of the Information Resource Management Commission shall vote on an action affecting solely his or her own State agency.

(b) Powers and Duties. -- The Commission has the following powers and duties:

(1) To develop, approve, and publish a statewide information technology strategy covering the current and following biennium that shall be updated annually and shall be submitted to the General Assembly on the first day of each regular session.

(2) To develop, approve, and sponsor statewide technology initiatives and to report on those initiatives in the annual update of the statewide information technology strategy.

(3) To review and approve biennially the information technology plans of the executive agencies, including their plans for the procurement and use of personal computers and workstations.

(4) To recommend to the Governor and the Office of State Budget and Management the relative priorities across executive agency information technology plans.

(5) To establish a quality assurance policy for all agency information technology projects, information systems training programs, and information systems documentation.

(6) To establish and enforce a quality review and expenditure review procedure for major agency information technology projects.

(7) To review and approve expenditures from appropriations made to the Office of State Budget and Management for the purpose of creating a Computer Reserve Fund.

(8) To develop and promote a policy and procedures for the fair and competitive procurement of information technology consistent with the rules of the Department of Administration and consistent with published industry standards for open systems that provide agencies with a vendor-neutral operating environment where different information technology hardware, software, and networks operate together easily and reliably.

(c) Meetings. -- The Information Resources Management Commission shall adopt bylaws containing rules governing its meeting procedures. The Information Resources Management Commission shall meet at least monthly.

"**§ 143B-472.42. Powers and duties of the Secretary of Commerce.**

The Secretary of Commerce shall:

(1) With respect to State agencies, exercise general coordinating authority for all telecommunications matters relating to the internal

management and operations of these agencies. In discharging that responsibility the ~~State Controller~~ Secretary of Commerce may in cooperation with affected State agency heads, do such of the following things as ~~he~~ the Secretary of Commerce deems necessary and advisable:

a. Provide for the establishment, management, and operation, through either State ownership or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:
   1. Central telephone systems and telephone networks;
   2. Teleprocessing systems;
   3. Teletype and facsimile services;
   4. Satellite services;
   5. Closed-circuit TV systems;
   6. Two-way radio systems;
   7. Microwave systems;
   8. Related systems based on telecommunication technologies.

b. With the approval of the Information Technology Council, coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item 'a.' of this subdivision.

c. Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item 'a.' of this subdivision.

e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.

f. Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

g. Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

h. Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.

i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

j. Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

k. Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the State Information Processing Services training to users within State agencies in telecommunications technology and systems.

l. Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision.

The provisions of this subdivision shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department.

(2) Provide cities, counties, and other local governmental units with access to a central telecommunications system or service established under subdivision ~~(14)~~ (1) of this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

(3) Establish switched broadband telecommunications services and permit in addition to State agencies, cities, counties, and other local government units, the following organizations and entities to share on a not-for-profit basis:

a. Nonprofit educational institutions;

b. ~~The Microelectronics Center of North Carolina ("MCNC");~~ MCNC;

c. Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part,

by MCNC, if such research activities relate to health care or education in North Carolina;

d. Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina; or

e. Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth herein shall not cause the State, the ~~Office of State Controller,~~ Department of Commerce, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6. Nor shall the State, the ~~Office of State Controller,~~ Department of Commerce, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the ~~federal~~ Communications Act of 1934, 47 U.S.C. § 153(h). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth above in subdivision ~~(16)a. through subdivision (16)e.~~ a. through e. of this subdivision shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer.

"**§ 143B-472.43. Information Highway Grants Advisory Council.**

(a) The Information Highway Grants Advisory Council is created within the ~~Office of the State Controller.~~ Department of Commerce. The Council shall consist of 18 members as follows:

(1) Five members to be appointed by the Governor.

(2) Four members to be appointed by the Speaker of the House of Representatives, at least one of whom shall be a public member.

(3) Four members to be appointed by the President Pro Tempore of the Senate, at least one of whom shall be a public member.

(4) One representative from the Department of Public Instruction to be designated by the Superintendent of Public Instruction.

(5) One representative from the Department of Community Colleges to be designated by the President of the Community College System.

(6) One representative from The University of North Carolina to be designated by the President of The University of North Carolina.

(7) One representative from the ~~Office of the State Controller, to be designated by the State Controller.~~ Department of Commerce, to be designated by the Secretary of Commerce.

(8) One representative from the North Carolina School of Science and Mathematics, to designated by the Board of Trustees.

Members of the Council shall be appointed by September 1, 1994, and shall serve two-year terms. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair from among the members of the General Assembly they appoint to the Council. Vacancies on the Council shall be filled in the same manner as the original appointment.

The members of the Council shall not receive compensation but may receive subsistence and travel in accordance with G.S. 120-3.1, G.S. 138-5, and G.S. 138-6 as appropriate.

(b) The Information Highway Grants Advisory Council shall meet as often as needed to transact its business. The first meeting of the Council shall be called by the cochairs. A majority of the members of the Council shall constitute a quorum. The ~~Office of the State Controller~~ Department of Commerce shall provide staff and space to the Council.

(c) The Information Highway Grants Advisory Council shall advise the Governor, the General Assembly, and ~~Office of the State Controller~~ Department of Commerce on matters pertaining to the North Carolina Information Highway. The Information Highway Grants Advisory Council shall, by September 30, 1994, develop criteria for evaluating grant applications under this section. The Information Highway Grants Advisory Council shall evaluate the grant applications and make recommendations to the State Controller regarding grant recipients by December 1, 1994. The State Controller shall not award grants before December 15, 1994. The State Controller shall notify the Information Highway Grants Advisory Council as to whom the intended grant recipients are 15 days prior to awarding the grants.

"§ 143B-472.44. State Information Processing Services.

With respect to all executive departments and agencies of State government, except the Department of Justice and The University of North Carolina, the ~~Office of State Controller~~ Department of Commerce shall have the following powers and duties:

(1) To establish and operate information resource centers and services to serve two or more departments on a cost-sharing basis, if the Information Resources Management Commission decides it is advisable from the standpoint of efficiency and economy to establish these centers and services;

(2) With the approval of the Information Resources Management Commission, to charge each department for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services;

(3) With the approval of the Information Resources Management Commission, to require any department served to transfer to the ~~Office of the State Controller~~ Department of Commerce ownership, custody, or control of information processing equipment, supplies, and positions required by the shared centers and services;

(4) With the approval of the Information Resources Management Commission, to adopt reasonable rules for the efficient and economical management and operation of the shared centers, services, and the integrated State telecommunications network;

(5) With the approval of the Information Resources Management Commission, to adopt plans, policies, procedures, and rules for the acquisition, management, and use of information technology resources in the departments affected by this subdivision to facilitate more efficient and economic use of information technology in these departments; and

(6) To develop and promote training programs to efficiently implement, use, and manage information technology resources.

The Department of Revenue is authorized to deviate from this subsection's requirements that departments or agencies consolidate information processing functions on equipment owned, controlled or under custody of the State Information Processing Services. All deviations from this subsection's requirements shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission and shall be consistent with available funding. The Department of Revenue is authorized to adopt and shall adopt plans, policies, procedures, requirements and rules for the acquisition, management, and use of information processing equipment, information processing programs, data communications capabilities, and information systems personnel in the Department of Revenue. If the plans, policies, procedures, requirements, rules, or standards adopted by the Department of Revenue deviate from the policies, procedures, or guidelines adopted by the State Information Processing Services or the Information Resources Management Commission, those deviations shall be allowed and shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission. The Department of Revenue and the State Information Processing Services shall develop data communications capabilities between the two computer centers utilizing the North Carolina Integrated Network, subject to a security review by the Secretary of Revenue.

The Department of Revenue shall prepare a plan to allow for substantial recovery and operation of major, critical computer applications. The plan shall include the names of the computer programs, databases, and data communications capabilities, identify the maximum amount of outage that can occur prior to the initiation of the plan and resumption of operation. The plan shall be consistent with commonly accepted practices for disaster recovery in the information processing industry. The plan shall be tested as soon as practical, but not later than six months, after the establishment of the Department of Revenue information processing capability.

No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information resource center or network established under this subdivision until safeguards for the data's security satisfactory to the department head and the ~~State Controller~~ Secretary of Commerce have been designed and installed and are fully operational. Nothing in

this subsection may be construed to prescribe what programs to satisfy a department's objectives are to be undertaken, nor to remove from the control and administration of the departments the responsibility for program efforts, regardless whether these efforts are specifically required by statute or are administered under the general program authority and responsibility of the department. This subdivision does not affect the provisions of G.S. 147-64.6, ~~G.S.~~ 147-64.7, or ~~G.S. 143B-426.39(14).~~ 143B-472.42(1). Notwithstanding any other provision of law, the ~~Office of the State Controller~~ Department of Commerce shall provide information technology services on a cost-sharing basis to the General Assembly and its agencies as requested by the Legislative Services Commission."

Section 7. G.S. 115C-102.5(b)(4) reads as rewritten:

"(4) ~~The Deputy Controller for the Information Resources Management Commission in the Office of the State Controller~~ A person with management responsibility concerning information technology related State Government functions, designated by the Secretary of Commerce;"

Section 8. G.S. 20-123(57) reads as rewritten:

"(57) The Information Resource Management Commission, as established by G.S. ~~143B-426.21.~~ 143B-472.41."

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

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April 27, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 869 - Proposed Committee Substitute

Senate Bill 869 transfers the following three technology-related agencies from the Office of the State Controller to the Department of Commerce:

(1) Information Resource Management Commission (IRMC)
(2) State Information Processing Services (SIPS)
(3) State Telecommunications Services (STS)

The transfer is made in Section 1 of the bill. The remaining sections of the bill recodify existing laws relating to these agencies from the statutes relating to the State Controller to those relating to the Department of Commerce and make other necessary conforming changes. The subject matter being recodified or conformed by each section is as follows:

Sec. 2.	IRMC statute
Sec. 3.	State Controller's duties with respect to telecommunications
Sec. 4.	Information Highway Grants Advisory Council
Sec. 5.	SIPS statute
Sec. 6.	143B-472.41 through .44 (relating to the IRMC)
Sec. 7.	Commission on School Technology appointees
Sec. 8.	Law prohibiting service by legislators on IRMC

This bill take effect when it becomes law.

S869-SMRN-002

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 919

Short Title: Unlawful Telecommunications. (Public)

Sponsors: Senators Odom; Rucho and Winner.

Referred to: Commerce.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DISCONTINUATION OF TELECOMMUNICATIONS SERVICES USED FOR UNLAWFUL PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Article 16 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-299. Discontinuation of telecommunications services used for unlawful purposes.**

(a) The legislature finds that some persons use telecommunications services to violate State or federal law. The legislature further finds that some persons use telecommunications services or technology, such as call forwarding and cellular radio transmission, to avoid detection or arrest.

(b) A customer of a telecommunications company operating within the State may use telecommunications services only for lawful purposes.

(c) If a local, State, or federal law enforcement officer acting within the scope of the officer's duties obtains evidence that telecommunications services are being used or have been used by a customer or by the employee or agent of the customer to violate State or federal law, the officer may apply to the district court of the county in which the suspected violation of State or federal law occurred for an order requiring the telecommunications company to discontinue service to the customer. The court shall hold a hearing on the application as soon as possible, but no sooner than 48 hours after notice of the application for discontinuation of service is delivered to the address at which the telecommunications services are furnished or to the address to which bills for telecommunications services are mailed, according to

the telecommunications company records. Notice must also be given to the registered agent for the service of process upon the telecommunications company at least 48 hours prior to the hearing. If the court finds clear and convincing evidence that the telecommunications services are being used or have been used to violate State or federal law, the court shall order the telecommunications company to discontinue such service immediately.

(d) Telecommunications services discontinued under this section may be reinstated only by court order, and call forwarding or message referrals, whether recorded or live, may not be provided until reinstatement of service is ordered by the court.

(e) A telecommunications company shall be held harmless from liability to any person when complying with any court order issued under this section."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 361

Short Title: Expand Information Highway Uses. (Public)

Sponsors: Senator Cooper.

Referred to: Commerce.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE AUTHORIZED USERS AND USES OF THE NORTH CAROLINA INFORMATION HIGHWAY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-426.39(16) reads as rewritten:

"(16) Establish switched broadband telecommunications services and permit in addition to State agencies, cities, counties, and other local government units, the following organizations and entities to share on a not-for-profit basis:

a. Nonprofit educational institutions;

b. The Microelectronics Center of North Carolina ('MCNC');

c. Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina;

d. Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina; ~~or~~

e. Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North ~~Carolina.~~ Carolina; or

f. Private nonprofit corporations whose purpose is to establish public-access networks on a regional basis for North

Carolina citizens or to assist the State and local government in carrying out its public purposes.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth herein shall not cause the State, the Office of State Controller, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6. Nor shall the State, the Office of State Controller, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the federal Communications Act of 1934, 47 U.S.C. § 153(h). ~~Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth above in subdivision (16)a. through subdivision (16)c. shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer.~~"

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 361 1st S Amendment No. _____
(to be filled in by Principal Clerk)

Rep.)
)
Sen.)

moves to amend the bill on page 2, line 1

by changing the word "or" to "and"

and on page 2, line 14 by changing the line to read:

"above in subdivision (11)a. through subdivision (11)f shall"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 361
Proposed Committee Substitute S361-PCS6668

Short Title: Expand Information Highway Use. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE AUTHORIZED USERS AND USES OF THE NORTH CAROLINA INFORMATION HIGHWAY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-426.39(16) reads as rewritten:

"(16) Establish switched broadband telecommunications services and permit in addition to State agencies, cities, counties, and other local government units, the following organizations and entities to share on a not-for-profit basis:

a. Nonprofit educational institutions;

b. The Microelectronics Center of North Carolina ('MCNC');

c. Research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC, if such research activities relate to health care or education in North Carolina;

d. Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina; ~~or~~

e. Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North ~~Carolina.~~ Carolina; or

f. Private nonprofit corporations whose purpose is to establish public-access networks on a regional basis for North

Carolina citizens or to assist the State and local government in carrying out its public purposes.

Provided, however, that sharing of the switched broadband telecommunications services by State agencies with entities or organizations in the categories set forth herein shall not cause the State, the Office of State Controller, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23)a.6. Nor shall the State, the Office of State Controller, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the federal Communications Act of 1934, 47 U.S.C. § 153(h). Provided further, authority to share the switched broadband telecommunications services with the non-State agencies set forth above in subdivision (16)a. through subdivision (16)e. shall terminate one year from the effective date of a tariff that makes the broadband services available to any ~~customer.~~ customer statewide. Provided further, authorized users of the switched broadband telecommunications services at educational institutions may permit their classrooms to be rented for the use of the broadband services by the above mentioned private, nonprofit entities, for civic and educational uses which serve a public purpose. Sharing, renting, or resale of these switched broadband services except as specifically provided in this subsection is prohibited."

Section 2. The implementation, application, and administration of Section 1 of this act shall be monitored by the State Telecommunications Section of State Information Processing Services (SIPS) which shall report to the Information Resources Management Commission (IRMC) and recommend modifications to be made to the General Assembly as appropriate.

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

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April 29, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 361 - EXPAND INFORMATION HIGHWAY USE** - Senator Cooper

Senate Bill 361 expands the authorized users of the North Carolina Information Highway to include private nonprofit corporations that are formed to establish public access networks on a regional basis for North Carolina citizens or to assist State and local governments.

In addition, the bill permits authorized users of these services at educational institutions to permit their classrooms to be rented for the use of these services by private, nonprofit entities, for civic and educational uses which serve a public purpose. Any other sharing, renting or resale of these services is prohibited.

The bill is effective when it becomes law.

S361-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1027

Short Title: Amend Voltage Safety Act. (Public)

Sponsors: Senator Miller.

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE HIGH-VOLTAGE LINE SAFETY ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-229.6(4) reads as rewritten:

"(4) 'Person responsible for the work to be done' means the person ~~performing or controlling the job~~ financially responsible for the work that necessitates the precautionary safety measures required by this Article."

Section 2. G.S. 95-229.7(a) reads as rewritten:

"(a) Unless danger of contact with high-voltage lines has been guarded against as provided by G.S. 95-229.8, 95-229.9, and 95-229.10, the following actions are prohibited:

(1) No person shall, individually or through an agent or employee, perform, or require any other person to perform, any work upon any land, building, highway, or other premises that will cause:

a. Such individual, agent, employee, or other person to be placed within six feet of any overhead high-voltage line; or any part of any tool or material used by the agent, employee, or other person to be brought within six feet of any overhead high-voltage line, or

b. Any part of any covered equipment or covered item used by the individual, agent, employee, or other person to be brought within 10 feet of any high-voltage line.

(2) No person shall, individually or through an agent or employee or as an agent or employee, erect, construct, operate, maintain, transport, or store any covered equipment or covered item within 10 feet of any high-voltage line, or such greater clearance as may be required under the circumstances by OSHA, except as provided herein. This prohibition shall not apply, however, to covered equipment as defined herein when lawfully driven or transported on public streets and highways in compliance with applicable height restrictions. The required clearance from high-voltage lines shall be not less than four feet when:
   a. Covered equipment as defined herein is lawfully driven or transported on public streets and highways in compliance with the height restriction applicable thereto,
   b. Refuse collection equipment is operating, or
   c. Agricultural equipment is operating.

(3) No person shall, individually or through an agent or employee or as an agent or employee, operate or cause to be operated an airplane or helicopter within 20 feet of a high-voltage line, except that no clearance is specified for licensed aerial applicators that may incidentally pass within the 20-foot limitation during normal operation.

(4) No person shall, individually or through an agent or employee or as an agent or employee, store or cause to be stored any materials that are expected to be moved or handled by covered equipment or any covered item within 10 feet of a high-voltage line.

(5) No person shall, individually or through an agent or employee or as an agent or employee, provide or cause to be provided additional clearance by either (i) raising, moving, or displacing any overhead ~~utility~~ high-voltage electric ~~lines of any type or nature including high-voltage, low-voltage, telephone, cable television, fire alarm, or other~~ lines or (ii) pulling or pushing any pole, guy, or other structural appurtenance.

(6) No person shall, individually or through an agent or employee or as an agent or employee, excavate or cause to be excavated any portion of any foundations of structures, including guy anchors or other structural appurtenances, which support any overhead ~~utility~~ high-voltage electric ~~lines of any type or nature, including high-voltage, low-voltage, telephone, cable television, fire alarm, or other~~ lines."

Section 3. G.S. 95-229.8(a) reads as rewritten:

"(a) No person shall, individually or through an agent or employee or as an agent or employee, operate any covered equipment in the proximity of a high-voltage line unless warning signs are posted and maintained as follows:

(1) A sign shall be located within the equipment and readily visible and legible to the operator of such equipment when at the controls of such equipment; and

(2) Signs shall be located on the outside of equipment so as to be readily visible and legible at 12 feet to other persons engaged in the work operations.

This subsection shall not apply to handheld ~~tools and~~ tools, handheld ~~equipment~~ equipment, and other items which by their size or configuration cannot accommodate the warning signs specified in G.S. 95-229.6(5)."

Section 4. G.S. 95-229.10(d) reads as rewritten:

"(d) Unless otherwise agreed, the owner or operator of the high-voltage lines shall initiate the precautionary safety arrangements agreed upon within five working days after the agreement for payment has been reached as required in subsection (c) of this section, but no earlier than the agreed construction date coordinated between the parties. Once initiated, the owner or operator shall complete the work promptly and without interruption, consistent with the owner's or operator's service needs. Should the owner or operator of the high-voltage lines fail to provide the precautionary safety measures agreed upon ~~in a timely manner,~~ within five working days, the owner or operator of the high-voltage lines shall be liable for costs or loss of production of the person or business entity requesting assistance to work in close proximity to high-voltage lines, except that no such liability shall exist during times of emergency, such as storm repair and the like."

Section 5. This act is effective when it becomes law and applies to work done on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1027
Proposed Committee Substitute S1027-PCS7785

Short Title: Amend Voltage Safety Act. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE HIGH-VOLTAGE LINE SAFETY ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-229.6(4) reads as rewritten:

"(4) 'Person responsible for the work to be done' means the person performing or controlling the ~~job~~ work, or the governmental entity that necessitates the precautionary safety measures required by this Article."

Section 2. G.S. 95-229.7(a) reads as rewritten:

"(a) Unless danger of contact with high-voltage lines has been guarded against as provided by G.S. 95-229.8, 95-229.9, and 95-229.10, the following actions are prohibited:

(1) No person shall, individually or through an agent or employee, perform, or require any other person to perform, any work upon any land, building, highway, or other premises that will cause:

a. Such individual, agent, employee, or other person to be placed within six feet of any overhead high-voltage line; or any part of any tool or material used by the agent, employee, or other person to be brought within six feet of any overhead high-voltage line, or

b. Any part of any covered equipment or covered item used by the individual, agent, employee, or other person to be brought within 10 feet of any high-voltage line.

(2) No person shall, individually or through an agent or employee or as an agent or employee, erect, construct, operate, maintain, transport, or store any covered equipment or covered item within 10 feet of any high-voltage line, or such greater clearance as may be required under the circumstances by OSHA, except as provided herein. This prohibition shall not apply, however, to covered equipment as defined herein when lawfully driven or transported on public streets and highways in compliance with applicable height restrictions. The required clearance from high-voltage lines shall be not less than four feet when:

a. Covered equipment as defined herein is lawfully driven or transported on public streets and highways in compliance with the height restriction applicable thereto,

b. Refuse collection equipment is operating, or

c. Agricultural equipment is operating.

(3) No person shall, individually or through an agent or employee or as an agent or employee, operate or cause to be operated an airplane or helicopter within 20 feet of a high-voltage line, except that no clearance is specified for licensed aerial applicators that may incidentally pass within the 20-foot limitation during normal operation.

(4) No person shall, individually or through an agent or employee or as an agent or employee, store or cause to be stored any materials that are expected to be moved or handled by covered equipment or any covered item within 10 feet of a high-voltage line.

(5) No person shall, individually or through an agent or employee or as an agent or employee, provide or cause to be provided additional clearance by either (i) raising, moving, or displacing any overhead utility electric ~~lines of any type or nature including high-voltage, low-voltage, telephone, cable television, fire alarm, or other~~ lines or (ii) pulling or pushing any pole, guy, or other structural appurtenance.

(6) No person shall, individually or through an agent or employee or as an agent or employee, excavate or cause to be excavated any portion of any foundations of structures, including guy anchors or other structural appurtenances, which support any overhead utility electric ~~lines of any type or nature, including high-voltage, low-voltage, telephone, cable television, fire alarm, or other~~ lines."

Section 3. G.S. 95-229.8(a) reads as rewritten:

"(a) No person shall, individually or through an agent or employee or as an agent or employee, operate any covered equipment in the proximity of a high-voltage line unless warning signs are posted and maintained as follows:

(1) A sign shall be located within the equipment and readily visible and legible to the operator of such equipment when at the controls of such equipment; and

(2) Signs shall be located on the outside of equipment so as to be readily visible and legible at 12 feet to other persons engaged in the work operations.

This subsection shall not apply to handheld ~~tools and~~ tools, handheld ~~equipment~~ equipment, and other items which by their size or configuration cannot accommodate the warning signs specified in G.S. 95-229.6(5)."

Section 4. This act is effective when it becomes law and applies to contracts entered into after October 1, 1996.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 973

Short Title: HMO Info. (Public)

Sponsors: Senators Winner; Allran, Gulley, Hartsell, Perdue, and Rand.

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HEALTH MAINTENANCE ORGANIZATIONS TO PROVIDE CERTAIN INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-67-50 is amended by adding the following new subsection to read:

"(f) Every health maintenance organization shall annually, on or before the first day of March of each year, file in the office of the Commissioner the following information:

(1) The number of and reasons for complaints received by the health maintenance organization;

(2) The number of enrollees who disenrolled from the HMO for any reason;

(3) The number of provider contracts that were terminated in the preceding year and the reasons for termination. This information shall include the number of providers leaving the plan and the number of new providers;

(4) Utilization data that includes statistics relating to the utilization, quality, availability, and accessibility of services, as defined by the Commissioner; and

(5) Aggregate financial compensation data, including the percentage of providers paid under a capitation arrangement, discounted fee-for-service or salary, the services included in the capitation payment, and the range of compensation paid by withhold or incentive

payments. This information shall be submitted on a form prescribed by the Commissioner."

Section 2. Article 67 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-67-51. Disclosure of certain information required.**

Every health maintenance organization shall provide the following information to enrollees and prospective enrollees, upon request:

(1) The evidence of coverage required under G.S. 58-67-50;

(2) The health maintenance organization's utilization review criteria or treatment protocol used to determine the medical necessity of a specific procedure or treatment;

(3) The health maintenance organization's drug formulary; and

(4) The health maintenance organization's determination of whether a specified procedure, test, or treatment is experimental."

Section 3. This act becomes effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/24/97

S. B. No. 973 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 10

( ) WHICH CHANGES THE TITLE

by _____

inserting after "complaints": by enrollees regarding medical treatment

+ on page 2, line 12 by inserting that line to:

(3) The health maintenance organization's restrictive formularies or prior approval requirements for obtaining prescription drugs, whether a particular drug or therapeutic class of drugs is excluded from its formulary, and the circumstances under which a non-formulary drug may be covered; and

+ on p2, line 13 by deleting "determination of" and replacing it with:

Procedures & medically based criteria for determining

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 930

Short Title: Abolish Burial Commission. (Public)

Sponsors: Senator Martin of Pitt.

Referred to: Commerce.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ABOLISH THE MUTUAL BURIAL ASSOCIATION COMMISSION AND TO TRANSFER ITS DUTIES TO THE BOARD OF MORTUARY SCIENCE.

Whereas, mutual burial associations no longer provide an adequate funeral benefit for their members, considering the current cost of funerals, and have largely fulfilled their function; and

Whereas, many mutual burial associations have merged with or sold their assets to insurance companies, and others contemplate doing so; and

Whereas, a number of the remaining associations are not financially sound and have little likelihood of becoming so; and

Whereas, the number of associations remaining after all mergers are accomplished will be inadequate, in all likelihood, to support the activities of the Mutual Burial Association Commission; and

Whereas, as it is appropriate to provide for the merger or dissolution of associations which are not financially sound, to transfer the duties and responsibilities of the Commission for any remaining associations to the Board of Mortuary Science, and to abolish the Commission; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Effective January 1, 1998, the authority, powers, duties, and functions vested in the North Carolina Mutual Burial Association Commission and in the Burial Association Administrator by Part 13 of Article 10 of Chapter 143B of the General Statutes are transferred to the North Carolina Board of Mortuary Science, created by Article 13A of Chapter 90 of the General Statutes, and the North Carolina

Mutual Burial Association Commission is abolished. All records, property, and unexpended balances of funds of the North Carolina Mutual Burial Association Commission and the Burial Association Administrator are transferred in their entirety to the Board of Mortuary Science. On and after January 1, 1998, the Board of Mortuary Science shall be responsible for the administration of Part 13 of Article 10 of Chapter 143B of the General Statutes.

Section 2. Effective January 1, 1998, G.S. 143B-472 and G.S. 143B-472.1 are repealed.

Section 3. Effective January 1, 1998, G.S. 143B-472.2 reads as rewritten:

"**§ 143B-472.2. Duties of ~~Commission;~~ Board; ~~meetings;~~ meetings. ~~Burial Administrator; secretary.~~**

It shall be the duty of the ~~North Carolina Mutual Burial Association Commission~~ North Carolina Board of Mortuary Science to supervise, pursuant to this Article, all burial associations authorized by this Article to operate in North Carolina, to determine that such associations are operated in conformity with this Article and the rules ~~and regulations~~ adopted pursuant to this Article; to assist the Burial Association Administrator with prosecution of violations of this Article or rules ~~and regulations~~ adopted pursuant thereto; ~~to counsel with and advise the Burial Association Administrator in the performance of his duties~~ and to protect the interest of members of mutual burial associations.

~~The North Carolina Mutual Burial Association Commission,~~ The North Carolina Board of Mortuary Science, after a public hearing, may promulgate reasonable rules and regulations for the enforcement of this Article and in order to carry out the intent thereof. The ~~Commission~~ Board is authorized and directed to adopt specific rules ~~and regulations~~ to provide for the orderly transfer of a member's benefits in cash or merchandise and services from the funeral director sponsoring the member's association to the funeral establishment which furnishes a funeral service, or merchandise, or both, for the burial of the member, provided that any funeral establishment to which the member's benefits are transferred in accordance with such rules ~~and regulations~~ shall, if located in North Carolina, be a funeral establishment registered and permitted under the provisions of ~~G.S. 90-210.17~~ G.S. 90-210.25 or shall, if located in any other state, territory or foreign country, be a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. One or more burial associations operating in North Carolina may merge into another burial association operating in North Carolina and two or more burial associations operating in North Carolina may consolidate into a new burial association provided that any such plan of merger or plan of consolidation shall be adopted and carried out in accordance with rules ~~and regulations~~ adopted by the ~~Commission~~ Board pursuant to this Article.

All rules ~~and regulations~~ heretofore adopted by the Burial Association Administrator or the Mutual Burial Association Commission in accordance with prior law and which have not been amended, rescinded, revoked or otherwise changed, or which have not been nullified or made inoperative or unenforceable because of any statute enacted after the adoption of any such rule, shall remain in full force and

effect until amended, rescinded, revoked or otherwise changed by action of the ~~Burial Association Commission~~ North Carolina Board of Mortuary Science as set out above, or until nullified or made inoperative or unenforceable because of statutory enactment or court decision.

~~The Commission shall elect its own chairman, who shall vote only when the Commission is evenly divided.~~

~~The Commission shall hold regular meetings at least twice each year, and more often if called by the chairman in Raleigh, or such place in North Carolina as the chairman may direct. Special meetings of the Commission may also be called in Raleigh or such other place in North Carolina as they may direct, by a majority of the Commission.~~

~~The Burial Association Administrator shall serve as secretary of the Commission and shall keep minutes of all regular and special meetings.~~

~~All regular or special meetings of the Commission, unless a majority of the members of the Commission vote otherwise, shall be open to the public. All regular meetings shall be advertised in at least three newspapers having intercounty circulation in North Carolina.~~

Members of the ~~Commission~~ Board shall receive, when attending such regular ~~or~~ special meetings such per diem, expense allowance and travel allowance as ~~are~~ allowed other commissions and boards of the State. The legal adviser to ~~the~~ ~~Commission~~ Board shall be entitled to actual expenses when attending regular or special meetings of the ~~Commission~~ Board held other than in Raleigh. All expenses of the ~~Commission~~ Board shall be paid from funds coming to the ~~Administrator~~ Board pursuant to this ~~Article.~~ Article or appropriated for this purpose."

Section 4. G.S. 143B-472.3 reads as rewritten:

"**§ 143B-472.3. Requirements as to rules and bylaws.**

All burial associations now operating within the State of North ~~Carolina, and all burial associations hereafter organized and operating within the State of North Carolina~~ Carolina shall have and maintain rules and bylaws embodying the following:

Article 1. The name of this association shall be ....., which shall indicate that said association is a mutual burial association.

Article 2. The objects and purposes for which this association is formed and the purposes for which it has been organized, and the methods and plan of operation of this association shall be to provide a plan for each member of this association for the payment of one funeral benefit for each member, which shall consist of a funeral benefit in cash or merchandise and service, with no free embalming or free ambulance service included in this benefit. No other free service or any other thing free shall be held out, promised or furnished, in any case. Such funeral benefit shall be in the amount of one hundred dollars ($100.00) of cash or merchandise and service, without free embalming or free ambulance service, for persons of the age of 10 years and over, or in the amount of fifty dollars ($50.00) for persons under the age of 10 years; provided, however, that any member of this association of the age of 10 years or more may purchase a double benefit (for a total benefit of two hundred dollars ($200.00)), and provided further, however, that any member of this

association under the age of 10 years may purchase a double benefit (for a total benefit of one hundred dollars ($100.00)) or a quadruple benefit (for a total benefit of two hundred dollars ($200.00)); however, any additional benefit (as set out herein) shall be based on the assessment rate, as provided in Article 6 of this section, at the attained age of applicant at the time the additional benefit takes effect. The purchase of an additional benefit shall not be available to any member who cannot fulfill the requirements as set forth in Article 3 of this section.

Provided, further, that mutual burial associations organized and operating pursuant to this Article may offer for sale to its members in good standing, funeral benefits payable only in cash in excess of two hundred dollars ($200.00), but those sales shall be subject to all applicable insurance laws of this State and shall in no manner be subject to the provisions of this Article or impair whatsoever funds heretofore or hereafter collected and held by that Association pursuant to this Article. All mutual burial association policies heretofore or hereafter sold in this State in an amount of two hundred dollars ($200.00) or less shall continue to be administered by the Burial Association Administrator and shall be subject to all provisions of this Article.

Article 3. Any person who has passed his or her first birthday, and who has not passed his or her sixty-fifth birthday, and who is in good health and not under treatment of any physician, nor confined in any institution for the treatment of mental or other disease, may become a member of this burial association by the payment by such person, or for such person, of a membership fee in accordance with the provisions of this Article and the first assessment due on the membership issued for such member in accordance with the provisions of Article 6 herein. The membership fee for any person joining prior to July 1, 1975, is twenty-five cents (25¢). The membership fee of any person joining after July 1, 1975, is twenty-five cents (25¢) for each one hundred dollars ($100.00) of benefits provided in such membership, with a minimum membership fee of twenty-five cents (25¢). The payment of the membership fee, without the payment of the first quarterly assessment due on the membership, shall not authorize the issuance of a certificate of membership in this burial association, and a certificate of membership for such person shall not be issued until the first such assessment is paid. Any member of this association joining after July 1, 1975, and who shall thereafter purchase an increased benefit shall pay an additional membership fee in accordance with this Article so that the total membership fee paid by such person shall equal twenty-five [cents] (25¢) for each one hundred dollars ($100.00) of benefits in such member's membership; provided, that any member with a fifty-dollar ($50.00) benefit who increases his benefit from fifty dollars ($50.00) to one hundred dollars ($100.00) shall not be required to pay any additional membership fee. The payment of any additional membership fee, without the payment of the first additional assessment due for the increased benefit, shall not make such member eligible for any additional benefit, and such member shall not be eligible for any additional benefit until the first such additional assessment due for such additional benefit is paid. Notwithstanding the foregoing, the provisions of the last paragraph of Article 6, hereinafter set out, shall control the increase of benefits from fifty dollars ($50.00) to one hundred dollars ($100.00) for

any member of this association joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars ($50.00).

Applicant's birthday must be written in the application and subject to verification by any record the Burial Association Administrator may deem necessary to prove or establish a true date of the birth of any applicant.

Article 4. The annual meeting of the association shall be held at ..... (here insert the place, date and hour); each member shall have one vote at said annual meeting and 15 members of the association shall constitute a quorum. There shall be elected at the annual meeting of said association a board of directors of seven members, each of whom shall serve for a period of from one to five years as the membership may determine and until his or her successor shall have been elected and qualified. Any member of the board of directors who shall fail to maintain his or her membership, as provided in the rules and bylaws of said association, shall cease to be a member of the board of directors and a director shall be appointed by the president of said association for the unexpired term of such disqualified member. There shall be at least an annual meeting of the board of directors, and such meeting shall be held immediately following the annual meeting of the membership of the association. The directors of the association may, by a majority vote, hold other meetings of which notice shall be given to each member by mailing such notice five days before the meeting to be held. At the annual meetings of the directors of the association, the board of directors shall elect a president, a vice-president, and a secretary-treasurer. The president and vice-president shall be elected from among the directors, but the secretary-treasurer may be selected from the director membership or from the membership of the association, it being provided that it is not necessary that the secretary-treasurer shall be a member of the board of directors. Among other duties that the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and faithful roll of the membership of this association at all times and he shall be chargeable with the duty of faithfully preserving and faithfully applying all moneys coming into his hands by virtue of his said office. The president, vice-president and secretary-treasurer shall constitute a board of control who shall direct the affairs of the association in accordance with these Articles and bylaws of the association, and subject to such modification as may be made or authorized by an act of the General Assembly. The secretary-treasurer shall keep a record of all assessments made, dues collected and benefits paid. The books of the association, together with all records and bank accounts shall be at all times open to the inspection of the Burial Association Administrator or his duly constituted auditors or representatives. It shall be the duty of the secretary or secretary-treasurer of each association to keep the books of the association posted up-to-date so that the financial standing of the association may be readily ascertained by the Burial Association Administrator or any auditor or representative employed by him. Upon the failure of any secretary or secretary-treasurer to comply with this provision, it shall be the duty of the Burial Association Administrator to take charge of the books of the association and do whatever work is necessary to bring the books up-to-date. The actual costs of

said work may be charged the burial association and shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Whenever in the opinion of the Burial Association Administrator, it is necessary to audit the books of any burial association more than once in any calendar year, the Burial Association Commission shall have authority to assess such burial association the actual cost of any audit in excess of one per calendar year, provided that no more than one audit may be deemed necessary unless a discrepancy exists at the last regular audit. Such cost shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Every burial association shall file with the North Carolina Mutual Burial Association Commission an annual report of its financial condition on a form furnished to it by the North Carolina Burial Association Administrator. Such report shall be filed on or before February 15 of each calendar year and shall cover the complete financial condition of the burial association for the immediate preceding calendar year. The Burial Association Commission shall levy and collect a penalty of twenty-five dollars ($25.00) for each day after February 15 that the report called for herein is not filed. The Commission may, in its discretion, grant any reasonable extension of the above filing date without the penalty provided in this section. Such penalty shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association. Any secretary or secretary-treasurer who fails to file such financial report on or before February 15 of each calendar year or on or before the last day of any period of extension for the filing of such report granted by the Commission to the burial association of such secretary or secretary-treasurer shall be guilty of a Class 3 misdemeanor. Each day after February 15, or the last day of any period of extension for the filing of the report granted by the Commission to the burial association of such secretary or secretary-treasurer, that said report is not filed by the secretary or secretary-treasurer of a burial association, shall constitute a separate offense.

Article 5. Upon the death of any officer, his successor shall be elected by the board of directors for the unexpired term. The president, vice-president and secretary-treasurer shall be elected for a term of from one to five years, and shall hold office until his successor is elected and qualified, subject to the power of the board of directors to remove any officer for good cause shown; provided, that any officer removed by the board of directors shall have the right of appeal to the membership of the association, such appeal to be heard at the next ensuing annual meeting of said membership.

Article 6. Each member shall be assessed according to the following schedule for the benefit indicated (or in multiples thereof for additional benefit) at the age of entry of the member.

Assessment Rate for Age Groups:

First to tenth birthday	
($50.00) benefit	five cents (5¢)
Tenth to thirtieth birthday	
($100.00) benefit	ten cents (10¢)

Thirtieth to fiftieth birthday
($100.00) benefit twenty cents (20¢)
Fiftieth to sixty-fifth birthday
($100.00) benefit thirty cents (30¢)

(Ages shall be defined as having passed a certain birthday instead of nearest birthday.) Assessment shall always be made on the entire membership in good standing.

Any member joining under the age of 10 shall, upon attaining his or her tenth birthday, pay thereafter the assessment for a member age 10 as set out above.

Any member joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars ($50.00) shall, if such member is in good standing upon attaining his or her tenth birthday, thereafter have benefits in force in the amount of one hundred dollars ($100.00) without the necessity of making application for such increased benefit. Assessments made thereafter for such member shall be the same as an assessment for a member age 10 as set out above. Such one-hundred-dollar ($100.00) benefit shall be in full force and effect for any such member in good standing immediately upon such member attaining his or her tenth birthday even though the increased assessment provided for herein shall not yet be due and payable, it being the intent of this Article that, notwithstanding any other provisions in these Articles, any member in good standing with a fifty-dollar ($50.00) benefit shall immediately upon attainment of his or her tenth birthday have a one-hundred-dollar ($100.00) benefit in force whether or not the increased assessment is then due and payable by such member in accordance with the assessment period of this association.

Article 7. No benefit will be paid for natural death occurring within 30 days from the date of the certificate of membership, which certificate shall express the true date such person becomes a member of this association, and the certificate issued shall be in acknowledgment of membership in this association. Benefits will be paid for death caused by accidental means occurring any time after date of membership certificate. No benefits will be paid in case of suicidal death of any member within one year from the date of the membership certificate. No agent or other person shall have authority to issue membership certificates in the field, but such membership certificates shall be issued at the home office of the association by duly authorized officers: the president, vice-president or secretary, and a record thereof duly made.

Article 8. Any member failing to pay any assessment within 30 days after notice shall be in bad standing, and unless and until restored, shall not be entitled to benefits. Notice shall be presumed duly given when mailed, postage paid, to the last known address of such members: Provided, moreover, that notice to the head of a family shall be construed as notice to the entire membership of such family in said association. Any member or head of a family changing his or her address shall give notice to the secretary-treasurer in writing of such change, giving the old address as well as the new, and the head of a family notifying the secretary-treasurer of change in address shall list with the secretary in such notice all the members of his or her family having membership in said association. Any member in bad standing may,

within 90 days after the date of an assessment notice, be reinstated to good standing by the payment of all delinquent dues and assessments: Provided such person shall at the same time submit to the secretary-treasurer satisfactory evidence of good health, in writing, and no benefit will be paid for natural death occurring within 30 days after reinstatement. In case of death caused by accidental means, benefit will be in force immediately after reinstatement. Any person desiring to discontinue his membership for any reason shall communicate such desire to the secretary-treasurer immediately and surrender his or her certificate of membership. Any adult member who is the head of a family and who, with his family, has become in bad standing, shall furnish to the secretary-treasurer satisfactory evidence of the good health of each member desired to be reinstated in writing.

Article 9. The benefits herein provided are for the purpose of furnishing a funeral and burial benefit, in cash or merchandise and service, for a deceased member. The funeral and burial benefit, if furnished in merchandise and service, shall be in keeping with and similar to the merchandise and service sold and furnished at the same price by reputable funeral directors of this or other like communities.

Article 10. It is understood and stipulated that the benefits provided for shall be payable only to a funeral establishment which provides a funeral service for a deceased member and which, if located in North Carolina, is a funeral establishment registered under the provisions of G.S. 90-210.17 or which, if located in any other state, territory or foreign country, is a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. Upon the death of any member, it shall be the duty of the person or persons making the funeral arrangements for such deceased member to notify the secretary of the member's burial association of the death of such member. The person or persons making the funeral arrangements for such deceased member shall have 30 days from the date of the death of such member in which to make demand upon the burial association for the funeral benefits to which such member is entitled.

The benefits provided for are to be paid by the burial association to the funeral director providing such funeral and burial service either in cash or in merchandise and service as elected by the person or persons making the funeral arrangements for such deceased member. If the burial association shall fail, on demand, to provide the benefits to which the deceased member was entitled to the funeral establishment which provided the funeral service for the deceased member, then the benefits shall be paid in cash to the representative of the deceased member qualified under law to receive such benefits.

Article 11. Assessments shall be made as provided in G.S. 143B-472.18. Whenever possible, assessments will be made at definitely stated intervals so as to reduce the cost of collection and to prevent lapse.

Article 12. In the event the proceeds of the annual assessments imposed on the entire membership for one year, as provided in G.S. 143B-472.18, do not prove sufficient at any time to yield the benefit provided for in these bylaws, then the secretary-treasurer shall notify the North Carolina Burial Association Administrator who shall be authorized, unless the membership is increased to that point where such

assessments are sufficient, to cause liquidation of said association, and may transfer all members in good standing to a like organization or association.

Article 13. (a) All legitimate operating expenses of the association shall be paid out of the assessments, but in no case shall the entire expenses exceed thirty percent (30%) of the total of the assessments collected and the investment income of the burial association in one calendar year.

(b) Each burial association shall establish and maintain a reserve account for the payment of member's benefits. On the thirty-first day of December following July 1, 1975, each burial association shall transfer to such burial association's reserve account established in accordance with this Article all funds which such burial association is maintaining on that date in an account designated by such burial association as either a surplus account or a reserve account. Thereafter, beginning on January 1, 1976, each burial association shall place in such reserve account five percent (5%) of the assessments collected from and after that date and five percent (5%) of the investment income of the association earned from and after that date. These sums shall continue to be placed in the association's reserve account until the association's reserve account shall equal twenty-one dollars ($21.00) per member. Thereafter if the reserve account shall fall below twenty-one dollars ($21.00) per member, such sums shall again be deposited in the account until such time as the reserve account shall again be equal to twenty-one dollars ($21.00) per member. If the reserve account shall at any time exceed twenty-one dollars ($21.00) per member, amounts in excess of twenty-one dollars ($21.00) per member may be withdrawn from the reserve account.

Article 14. Special meetings of the association membership may be called by the secretary-treasurer when by him deemed necessary or advisable, and he shall call a meeting when petitioned to do so by sixty-six and two-thirds percent (66 2/3%) of the members of said association who are in good standing.

Article 15. The secretary-treasurer shall, upon satisfactory evidence that membership was granted to any person not qualified at the time of entry as provided under Article 3 of these bylaws, refund any amounts paid as assessment, and shall remove the name from the membership roll.

Article 16. Any member may pay any number of assessments in advance, in which case such member will not be further assessed until a like number of assessments shall have been levied against the remaining membership.

Article 17. No person may maintain active membership in two or more separate burial associations. Any person who is found to have membership in two or more separate burial associations shall forfeit all benefits and fees paid in all associations of which he is a member except in the association which he first joined and of which he is still then a member. A person is not a member of an association for purposes of this Article if he has discontinued his membership in such association or if such association has been placed in liquidation.

Article 18. Each year, before the annual meeting of the membership of this association, the association shall cause to be published in a newspaper of general circulation in the county in which such association has its principal place of business,

or shall cause to be mailed to each member in good standing a statement showing total income collected, expenses paid and burial benefits provided for by such association during the next preceding year.

Article 19. These rules and bylaws shall not be modified, canceled or abridged by any association or other authority except by act of the General Assembly of North Carolina."

Section 5. Effective January 1, 1998, the phrases "North Carolina Mutual Burial Association Commission", "Mutual Burial Association Commission", and "Burial Association Administrator" are deleted and then replaced by the phrase "Board of Mortuary Science" wherever they occur in Part 13 of Article 10 of Chapter 145B of the General Statutes. The words "Commission" and "Administrator" are deleted and then replaced by the word "Board" wherever they occur in Part 13 of Article 10 of Chapter 145B of the General Statutes.

Section 6. Effective January 1, 1998, the pronouns "he" and "his", when referring to the Burial Association Administrator, are deleted wherever they occur in Part 13 of Article 10 of Chapter 143B of the General Statutes and are replaced, respectively, by the pronouns "it" and "its".

Section 7. (a) Effective January 1, 1998, references in the Session Laws to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator shall be deemed to refer to the Board of Mortuary Science. Every Session Law that refers to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator and that relates to any power, duty, function, or obligation of the Commission or the Administrator that continues in effect after the provisions of this act become effective shall be construed in a manner consistent with this act.

(b) The Revisor of Statutes may, on and after the effective date of this act, correct any reference or citation in the General Statutes that is amended by this act by deleting incorrect references and substituting correct references.

(c) The Revisor of Statutes may, on and after the first day of January 1998, delete any reference to the North Carolina Mutual Burial Association Commission or to the Burial Association Administrator in any portion of the General Statutes to which conforming amendments are not made by this act and substitute, as appropriate and consistent with this act, any of the following terms: North Carolina Board of Mortuary Science, Board of Mortuary Science, or Board.

Section 8. Every act of the North Carolina Mutual Burial Association Commission and the Burial Association Administrator that occurred prior to the date this act becomes law or to the date that provisions of this act become effective, and which is otherwise valid, continues to be valid and effective, notwithstanding any change in name or transfer of authority, powers, duties, and functions by this act.

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

North Carolina General Assembly
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April 27, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 930 (Abolish Burial Commission)

Senate Bill 930 abolishes the North Carolina Mutual Burial Association Commission. The Commission and the Burial Administrator supervise burial associations in North Carolina to ensure that they are financially solvent and can pay the benefits owed to their members. The preamble to the bill notes that because many of the mutual burial associations have either merged or sold out to insurance companies, it is unlikely that the remainder can financially support the Mutual Burial Association Commission and Burial Administrator. The responsibility for overseeing the remaining burial associations would be transferred to the Board of Mortuary Science.

The abolition of the Commission is contained in Sections 1 and 2. (Section 2 repeals laws relating to the Commission's structure and membership (G.S. 143B-472 and -472.1). Sections 3 and 4 make conforming changes to a couple of statutes. Sections 5 through 8 complete the transfer of duties from the Commission and Burial Administrator to the Board of Mortuary Science by allowing for all other statutes to be conformed, including the law that provides for the assessment of the burial associations for the support of the Burial Administrator (G.S. 143B-472.5).

This bill takes effect January 1, 1998.

S930-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1044

Short Title: Private Personnel Services Fees. (Public)

Sponsors: Senator Dalton.

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRIVATE PERSONNEL SERVICES TO CHARGE APPLICANTS A REGISTRATION FEE AND TO REQUIRE THAT SUCH SERVICES POST A SECURITY BOND COVERING THE REFUND OF REGISTRATION FEES WITH THE DEPARTMENT OF LABOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-47.1 reads as rewritten:

"**§ 95-47.1. Definitions.**

~~As used in this Article, unless the context clearly requires otherwise:~~ The following definitions apply in this Article:

(1) ~~"Accept" employment means to~~ Accept employment. -- To accept an employer's offer of employment or to begin work for an employer.

(2) ~~"Applicant," except~~ Applicant. -- Except where it refers to an applicant for a private personnel services license, ~~means~~ the term means any person who uses or attempts to use the services of a private personnel service in seeking employment.

(3) ~~"Commissioner" means the~~ Commissioner. -- The North Carolina Commissioner of Labor or any person designated by the Commissioner as the representative of the Commissioner.

(4) ~~"Complaint" means a~~ Complaint. -- A communication to the Commissioner or department alleging facts that could support issuance of a warning or citation under G.S. 95-47.9.

(5) ~~"Contract" means any~~ Contract. -- Any agreement between a private personnel service and an applicant obligating the applicant to pay a fee or any agreement subsequent to ~~such~~ a contract reducing the obligations of the private personnel service to the applicant under the contract.

(6) ~~"Employee" means a~~ Employee. -- A person performing work or services of any kind or character for compensation.

(7) ~~"Employer" means a~~ Employer. -- A person employing or seeking to employ a person for compensation, or any representative or employee of such employer.

(8) ~~"Employment" means any~~ Employment. -- Any service or engagement rendered or undertaken for wages, salary, commission, or other form of compensation.

(9) ~~"Fee" means anything~~ Fee. -- Anything of value, including money or other valuable consideration or services or the promise of any of the foregoing, required or received by a private personnel service, in payment for any of its services, or act rendered or to be rendered by any private personnel service.

(10) ~~"Interview" means a~~ Interview. -- A meeting between an employer and an applicant to discuss potential employment.

(11) ~~"Job order" means an~~ Job order. -- An oral or written communication from an employer authorizing a private personnel service to refer applicants for a position the employer has available.

(12) ~~"Licensee" means any~~ Licensee. -- Any person licensed by the Commissioner to operate a private personnel service.

(13) ~~"Manager" of a private personnel service means the~~ Manager. -- The person who is responsible for the operation of an office of a private personnel service.

(14) ~~"Owner" of a private personnel service means the~~ Owner. -- The sole proprietor of a private personnel service operated as a sole proprietorship; any partner in a partnership that owns or operates a private personnel service; any stockholder with a financial interest greater than 10 percent (10%) in a corporation that owns or operates a private personnel service.

(15) ~~"Person" means any~~ Person. -- Any individual, association, partnership or corporation.

(16) ~~"Private personnel service" means any~~ Private personnel service. -- Any business operated in the State of North Carolina by any person for profit which secures employment or by any form of advertising holds itself out to applicants as able to secure employment or to provide information or service of any kind purporting to promote, lead to or result in employment for the applicant with any employer other than itself, where any applicant

may become liable for the payment of a fee to the private personnel service, either directly or indirectly. 'Private personnel service' does not include:

a. Any educational, religious, charitable, fraternal or benevolent organization which charges no fee for services rendered in securing employment or providing information about ~~employment;~~ employment.

b. Any employment service operated by the State of North Carolina, the Government of the United States, or any city, county, or town, or any agency ~~thereof;~~ thereof.

c. Any temporary help service that at no time advertises or represents that its employee may, with the approval of the temporary help service, be employed by one of its client companies on a permanent basis and which does not act as a private personnel service or an employer fee paid personnel ~~service;~~ service.

d. Any newspaper of general circulation or other business engaged primarily in communicating information other than information about specific positions of employment and that does not purport to adapt the information provided to the needs or desires of an individual ~~subscriber;~~ subscriber.

e. Employment offices that charge no fee to the applicant other than union dues or to the employer and which are used solely for the hiring of employees under a valid union contract by the employer subscribing to this ~~contract;~~ contract.

f. Any employer fee paid personnel consulting service or temporary help service that offers temporary to permanent placement when the service operates on a one hundred percent (100%) employer fee paid service basis, requires no applicant placement contract, and has no recourse against an applicant for a fee under any circumstances.

(17) ~~"Refer" an applicant means to~~ Refer. -- To submit applicants' resumes to an employer, arrange interviews between an applicant and an employer, or to provide an employer with the name of an applicant.

(18) Registration fee. -- The fee paid by an applicant to a licensee for information or services that might lead to or result in employment for the applicant. The term 'registration fee' does not include charges for employment placement services."

Section 2. G.S. 95-47.2(j) reads as rewritten:

"(j) Each licensee shall, before the license is issued or ~~renewed,~~ renewed and before any registration fees are accepted, deposit with the department a bond payable to the State of North Carolina and executed by a surety company duly authorized to

transact business in the State of North Carolina in the amount of ten thousand dollars ($10,000) or an amount sufficient to refund all unearned registration fees, whichever is greater, and upon condition that the private personnel service will pay to applicants all refunds due under this Article and regulations adopted hereunder if the private personnel service fails to render services covered by the registration fee or terminates its business."

Section 3. G.S. 95-47.6 reads as rewritten:

"**§ 95-47.6. Prohibited acts.**

A private personnel service shall not engage in any of the following activities or conduct:

(1) Induce or attempt to induce any employee placed by that private personnel service to terminate his employment in order to obtain other employment through the private personnel service; or procure or attempt to procure the discharge of any person from his employment.

(2) Publish or cause to be published any false or fraudulent information, representation, promise, notice or advertisement.

(3) Advertise in newspapers or otherwise, unless the advertising contains the name of the private personnel service and the word 'personnel service'.

(4) Direct an applicant to visit or call upon an employer for the purpose of obtaining employment without having first obtained a job order or authorization from the employer for the interview. A private personnel service may attempt to sell the services of an applicant to an employer from whom no job order has been received and may charge a fee if the efforts result in the applicant's being employed.

(5) Send or cause to be sent any person to any employer where the private personnel service knows that the prospective employment is or would be in violation of State or federal laws governing minimum wages or child labor, or has been notified that a labor dispute is in progress, without notifying the applicant of that fact, or knowingly arrange an interview for an employment or occupation prohibited by law.

(6) Send or cause to be sent any person to any place which the private personnel service knows is maintained for immoral or illicit purposes.

(7) Divide or share, either directly or indirectly, the fees collected by the private personnel service, with contractors, subcontractors, employers or their agents, foremen or anyone in their employ, or if the contractors, subcontractors or employers be a corporation, any of the officers, directors or employees of the corporation to whom applicants for employment are sent.

(8) Make, cause to be made, or use any name, sign or advertising device bearing a name which is similar to or may reasonably be confused with the name of a federal, State, city, county or other governmental unit or agency.

(9) Knowingly make any false or misleading promise or representation or give any false or misleading information to any applicant or employer in regard to any employment, work or position, its nature, location, duration, compensation or the circumstances surrounding any employment, work or position including the availability thereof.

(10) Accept a registration fee from an ~~applicant.~~ applicant, unless the private personnel service has on deposit with the Commissioner a security bond that is sufficient to cover the refund of any unearned registration fees.

(11) Impose or attempt to collect any fee from any applicant unless that applicant accepts employment with an employer to which the applicant was directly or indirectly introduced by the private personnel service.

(12) A fee may be charged for resume writing provided the private personnel service does not require the applicant to become obligated for any other services."

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

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April 28, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 1044 (Private Personnel Service Fees)

Senate Bill 1044 authorizes private personnel services to charge their applicants a registration fee for information or services that may lead to employment for the applicant. This fee is separate from the charges for employment placement services provided by the private personnel services. Registration fees are currently not allowed.

Section 2 provides that the $10,000 surety bond that is already required of these entities must be in an amount sufficient to refund unearned registration fees or $10,000, whichever is higher. The bond protects applicants' interest in refunds if the private personnel service goes out of business or fails to render services covered by the registration fee.

Section 3 prohibits a private personnel service from accepting a registration fee unless it has a surety bond in the appropriate amount on deposit with the Commissioner of Labor.

The bill takes effect upon becoming law.

S1044-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 866*

Short Title: Prescription Drugs/Competition. (Public)

Sponsors: Senators Rand; Ballance, Carpenter, Forrester, Foxx, Hartsell, Ledbetter, Martin of Pitt, and Shaw of Cumberland.

Referred to: Commerce.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN THE PURCHASE OF PRESCRIPTION DRUGS AND PHARMACEUTICAL SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Article 51 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-51-37A. Prescription drugs and pharmaceutical services benefits.**

(a) This section applies only to health benefit plans that provide benefits for prescription drugs and pharmaceutical services.

(b) The purposes of this section are:

(1) To promote competition among and continued availability of retail pharmacies who redeem benefits for prescription drugs and pharmaceutical services provided to consumers by a health benefit plan or insurance certificate.

(2) To prohibit anticompetitive restrictions in pharmacy provider contracts between a pharmacy and a health benefit plan, insurer or third-party administrator.

(3) To enable a pharmacy to establish without restriction its prices for both prescription drugs and pharmaceutical services, as well as to control its hours of operation.

(4) To further ensure that consumers may redeem prescription drug and pharmaceutical services benefits allowed by a health benefit plan or an insurer at the pharmacy of the beneficiary's choice.

(5) To continue to enable a health benefit plan, insurer or third-party administrator to establish prescription drug and pharmaceutical services benefits it provides to its beneficiaries or insureds, so long as in so doing it does not interfere with the right of the pharmacy to establish its own price or charge for the drug or service.

(c) As used in this section:

(1) 'Benefit' or 'benefits' means a benefit for either prescription drugs or pharmaceutical services, or both, provided by a health benefit plan or an insurer.

(2) 'Drug' or 'prescription drug' means any substance subject to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. G.S. 301-395, as amended.

(3) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; coverage provided by an employer under G.S. 97-93; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to the act provided under federal law or regulation. 'Health benefit plan' does not mean accident only insurance, or credit insurance, or disability income insurance.

(4) 'Insurer' means any entity that provides or offers a health benefit plan, including, but not limited to, an entity subject to Article 49, Article 65, or Article 67 of this Chapter.

(5) 'Pharmacy' means a pharmacy required by Article 4A of Chapter 90 of the General Statutes to be registered with the North Carolina Board of Pharmacy. Unless otherwise expressly provided in this section, the term 'pharmacy' also means a pharmacy that redeems benefits under a health benefit plan, insurer, or third-party administrator through a pharmacy provider contract or otherwise.

(6) 'Pharmacy provider contract' means a contract or agreement between a pharmacy and a health benefit plan, an insurer or a third-party administrator under which the pharmacy agrees to redeem prescription drug and pharmaceutical services benefits provided by a health benefit plan or insurer to the subscribers or beneficiaries of the plan or health insurance certificate.

(7) 'Third-party administrator' means a person who directly or indirectly solicits or effects coverage of, underwrites, collects

charges or premiums, or adjusts or settles claims in connection with a health benefit plan.

(d) Notwithstanding G.S. 58-51-37, a health benefit plan, insurer, third-party administrator, or other entity shall not, directly or indirectly, restrict or prohibit a pharmacy from establishing its charge or price for prescription drugs and pharmaceutical services, or both, or its hours of operation.

(e) Subject to the provisions of this section, a benefit for prescription drugs or pharmaceutical services or both may be redeemed by the beneficiary at any pharmacy of the beneficiary's choice.

(f) A health benefit plan, insurer, third-party administrator, or other person or entity providing benefits may not, directly or indirectly, restrict, induce, or financially coerce the beneficiary's choice of pharmacy.

(g) Notwithstanding G.S. 58-51-37, if the charge or price established by the pharmacy for a prescription drug or pharmaceutical service, or both, is greater than the benefit allowed by the health benefit plan or insurer for the drug or service, then the beneficiary is responsible for paying the pharmacy the difference between the benefit and the charge or price of the pharmacy for the prescription drug or pharmaceutical service, or both.

(h) A health benefit plan, insurer, or third-party administrator shall not restrict or prohibit, directly or indirectly, a pharmacy from charging the beneficiary for services rendered by the pharmacy that are in addition to charges for the drug, for dispensing the drug, or for patient counseling. Any provision of a pharmacy provider contract that restricts a pharmacy from charging and collecting for the additional service or services is unenforceable to the extent of the conflict.

(i) A health benefit plan, insurer, or third-party administrator shall not do any act which promotes or recommends, directly or indirectly, one pharmacy, group of pharmacies, or other entity over any other pharmacy, group of pharmacies, or other entity, as a source for redeeming benefits to beneficiaries under a health benefit plan, when the purpose of the act is to influence a beneficiary's choice of pharmacy or when the health benefit plan, insurer, or third-party administrator has a financial interest in the choice of pharmacy or in the redeemed benefit transaction. Acts prohibited under this subsection include, but are not limited to:

(1) Reimbursing one pharmacy, group of pharmacies, or other entity for benefits at a reimbursement rate different from that allowed to another pharmacy, or group of pharmacies, or other entity under the plan for the identical prescription drugs or pharmaceutical services, or both, covered by the benefit; or

(2) Directly or indirectly influencing, or attempting to influence, a beneficiary's choice of pharmacy through communications to the beneficiary where an opinion or judgment is expressed as to what a pharmacy's charge or price should be, or as to what a beneficiary's co-payment difference should be; or

(3) By agreement or otherwise, recommending, requiring, coercing or inducing a beneficiary to redeem a benefit at a particular pharmacy, group of pharmacies, or other entity.

(j) The health benefit plan or the insurer shall inform all beneficiaries under the plan that benefits may be redeemed at any pharmacy which the beneficiary chooses. This information shall be communicated through reasonable means on a timely basis and at regular intervals. This information shall also be included in the written summary or description of the health benefit plan or insurance, as well as other written communications furnished to beneficiaries where benefits are mentioned. If the health benefit plan, insurer, or third-party administrator furnishes to a beneficiary the names of pharmacies where benefits may be redeemed, then all pharmacies in the county or area of the State where the beneficiary resides must be included.

(k) A pharmacy eligible to redeem benefits under a health benefit plan may announce and advertise that eligibility in a commercially reasonable manner.

(l) Penalties:

(1) The Commissioner of Insurance shall not approve any health benefit plan or policy providing prescription drug or pharmaceutical services benefits that does not conform to the provisions of this section.

(2) Any provision of a health benefit plan that is executed, delivered, or renewed or otherwise contracted for in this State that is in conflict with any provision of this section shall be void, to the extent of the conflict.

(3) Any provision of a pharmacy provider contract between a health benefit plan, or insurer, or third-party administrator, or other person subject to the provisions of this section and a pharmacy, or pharmacist licensed under Article 4A of Chapter 90 of the General Statutes, that is in conflict with this section is void to the extent of the conflict.

(4) A violation of this section creates a civil cause of action for damages or injunctive relief in favor of any person, pharmacy, or other entity aggrieved by the violation.

(5) The Commissioner of Insurance shall investigate and sanction any person, health benefit plan, insurer, third-party administrator, or other person that violates the provisions of this section, pursuant to Chapter 58 and other applicable law.

(6) A health benefit plan or insurer or third-party administrator, or other person that violates this section shall be subject to the provisions of G.S. 58-2-70 concerning civil penalties, restitution and summary suspension of license or certificate; provided, however, if pursuant to G.S. 58-2-70(d), monetary civil penalties are directed by the Commissioner, for the purposes of this section, these penalties shall not be less than one thousand dollars ($1,000) per day, nor more than ten thousand dollars ($10,000) per day.

(7) If the Commissioner has reason to believe that a health benefit plan, insurer, third-party administrator, or other person or entity has failed to comply, the Commissioner shall issue and serve upon the person or entity a statement of the charges in that respect and a notice of hearing to be held at the time and place fixed in the notice, which shall not be less than 10 days after the date of service of the notice. If, after hearing, the Commissioner finds that the person or entity is in violation of this section, the Commissioner shall reduce the finding to writing and issue and serve upon the person or entity an order requiring the person or entity to cease and desist from engaging in the violation. A person or entity required to cease and desist pursuant to this section may obtain a review of the cease and desist order in accordance with the procedures set forth in G.S. 58-63-35.

(8) The Commissioner of Insurance shall have the authority granted by this Chapter to enforce violations of this section, including additional authority provided in this section.

(9) The Attorney General shall bring such actions as are necessary to enforce or prevent violations of this section, either through representation of the Commissioner of Insurance or otherwise."

Section 2. If any provision of this act or the application of this act to any person or circumstance is held invalid, the other provisions or applications of this act shall be given effect without the invalid provisions or applications.

Section 3. This act applies to every health benefit plan as defined in Section 1 of this act that is delivered, issued for delivery, or renewed on or after October 1, 1997. For purposes of this act, renewal of a health benefit plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 866*
Proposed Committee Substitute S866-PCS8687

Short Title: Prescription Drugs/Competition. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO PROMOTE COMPETITION, CHOICE, AND AVAILABILITY IN THE PURCHASE OF PRESCRIPTION DRUGS AND PHARMACEUTICAL SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Article 51 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-51-37A. Prescription drugs and pharmaceutical services benefits.**

(a) This section applies only to health benefit plans that provide benefits for prescription drugs and pharmaceutical services.

(b) The purposes of this section are:

(1) To promote competition among and continued availability of retail pharmacies that redeem benefits for prescription drugs and pharmaceutical services provided to consumers by a health benefit plan or insurance certificate.

(2) To prohibit anticompetitive restrictions in pharmacy provider contracts between a pharmacy and a health benefit plan, insurer, or third-party administrator.

(3) To enable a pharmacy to establish without restriction its prices for both prescription drugs and pharmaceutical services, as well as to control its hours of operation.

(4) To further ensure that consumers may redeem prescription drugs and pharmaceutical services benefits allowed by a health benefit plan or an insurer at the pharmacy of the beneficiary's choice.

(5) To continue to enable a health benefit plan, insurer, or third-party administrator to establish prescription drug and pharmaceutical services benefits it provides to its beneficiaries or insureds, so long as in so doing it does not interfere with the right of the pharmacy to establish its own price or charge for the drug or service.

(c) As used in this section:

(1) 'Benefit' or 'benefits' means a benefit for either prescription drugs or pharmaceutical services, or both, provided by a health benefit plan or an insurer.

(2) 'Drug' or 'prescription drug' means any substance subject to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-395, as amended.

(3) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; coverage provided by an employer under G.S. 97-93; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to the act provided under federal law or regulation. 'Health benefit plan' does not mean accident only insurance, or credit insurance, or disability income insurance.

(4) 'Insurer' means any entity that provides or offers a health benefit plan, including, but not limited to, an entity subject to Article 49, Article 65, or Article 67 of this Chapter.

(5) 'Pharmacy' means a pharmacy required by Article 4A of Chapter 90 of the General Statutes to be registered with the North Carolina Board of Pharmacy. Unless otherwise expressly provided in this section, the term 'pharmacy' also means a pharmacy that redeems benefits under a health benefit plan, insurer, or third-party administrator through a pharmacy provider contract or otherwise.

(6) 'Pharmacy provider contract' means a contract or agreement between a pharmacy and a health benefit plan, an insurer, or a third-party administrator under which the pharmacy agrees to redeem prescription drugs and pharmaceutical services benefits provided by a health benefit plan or insurer to the subscribers or beneficiaries of the plan or health insurance certificate.

(7) 'Third-party administrator' means a person who directly or indirectly solicits or effects coverage of, underwrites, collects

charges or premiums, or adjusts or settles claims in connection with a health benefit plan.

(d) Notwithstanding G.S. 58-51-37, a health benefit plan, insurer, third-party administrator, or other entity shall not, directly or indirectly, restrict or prohibit a pharmacy that is not a party to a pharmacy provider contract from establishing its charge or price for prescription drugs and pharmaceutical services, or both, or its hours of operation.

(e) Subject to the provisions of this section, a benefit for prescription drugs or pharmaceutical services or both may be redeemed by the beneficiary at any pharmacy of the beneficiary's choice. The health benefit plan, insurer, third-party administrator, or other person or entity providing benefits shall redeem benefits for prescription drugs or pharmaceutical services provided by a pharmacy that is not a party to a pharmacy provider contract at the same rate and in the same manner as it redeems the benefits for the drugs or services provided by a pharmacy under a pharmacy provider contract.

(f) A health benefit plan, insurer, third-party administrator, or other person or entity providing benefits may not, directly or indirectly, restrict or financially coerce the beneficiary's choice of pharmacy.

(g) Notwithstanding G.S. 58-51-37, if the charge or price established by the pharmacy for a prescription drug or pharmaceutical service, or both, is greater than the benefit allowed by the health benefit plan or insurer for the drug or service, then the beneficiary is responsible for paying the pharmacy the difference between the benefit and the charge or price of the pharmacy for the prescription drug or pharmaceutical service, or both.

(h) A health benefit plan, insurer, or third-party administrator shall not restrict or prohibit, directly or indirectly, a pharmacy that is not a party to a pharmacy provider contract from charging the beneficiary for services rendered by the pharmacy that are in addition to charges for the drug, for dispensing the drug, or for patient counseling.

(i) A health benefit plan, insurer, or third-party administrator shall not do any act which promotes or recommends, directly or indirectly, one pharmacy, group of pharmacies, or other entity over any other pharmacy, group of pharmacies, or other entity, as a source for redeeming benefits to beneficiaries under a health benefit plan, when the purpose of the act is to influence a beneficiary's choice of pharmacy or when the health benefit plan, insurer, or third-party administrator has a financial interest in the choice of pharmacy or in the redeemed benefit transaction. Acts prohibited under this subsection include, but are not limited to:

(1) Reimbursing one pharmacy, group of pharmacies, or other entity for benefits at a reimbursement rate different from that allowed to another pharmacy, or group of pharmacies, or other entity under the plan for the identical prescription drugs or pharmaceutical services, or both, covered by the benefit; or

(2) Directly or indirectly influencing, or attempting to influence, a beneficiary's choice of pharmacy through communications to the beneficiary where an opinion or judgment is expressed as to what a

pharmacy's charge or price should be, or as to what a beneficiary's co-payment difference should be; or

(3) By agreement or otherwise, requiring or coercing a beneficiary to redeem a benefit at a particular pharmacy, group of pharmacies, or other entity.

(j) The health benefit plan or the insurer shall inform all beneficiaries under the plan that benefits may be redeemed at any pharmacy which the beneficiary chooses. This information shall be communicated through reasonable means on a timely basis and at regular intervals. This information shall also be included in the written summary or description of the health benefit plan or insurance, as well as other written communications furnished to beneficiaries where benefits are mentioned.

(k) A pharmacy eligible to redeem benefits under a health benefit plan may announce and advertise that eligibility in a commercially reasonable manner.

(l) Penalties:

(1) The Commissioner of Insurance shall not approve any health benefit plan or policy providing prescription drugs or pharmaceutical services benefits that does not conform to the provisions of this section.

(2) Any provision of a health benefit plan that is executed, delivered, or renewed or otherwise contracted for in this State that is in conflict with any provision of this section shall be void, to the extent of the conflict.

(3) Any provision of a pharmacy provider contract between a health benefit plan, or insurer, or third-party administrator, or other person subject to the provisions of this section and a pharmacy, or pharmacist licensed under Article 4A of Chapter 90 of the General Statutes, that is in conflict with this section is void to the extent of the conflict.

(4) A violation of this section creates a civil cause of action for damages or injunctive relief in favor of any person, pharmacy, or other entity aggrieved by the violation.

(5) The Commissioner of Insurance shall investigate and sanction any person, health benefit plan, insurer, third-party administrator, or other person that violates the provisions of this section, pursuant to Chapter 58 and other applicable law.

(6) A health benefit plan or insurer, or third-party administrator, or other person that violates this section shall be subject to the provisions of G.S. 58-2-70 concerning civil penalties, restitution, and summary suspension of license or certificate; provided, however, if pursuant to G.S. 58-2-70(d), monetary civil penalties are directed by the Commissioner, for the purposes of this section, these penalties shall not be less than one thousand dollars ($1,000) per day, nor more than ten thousand dollars ($10,000) per day.

(7) If the Commissioner has reason to believe that a health benefit plan, insurer, third-party administrator, or other person or entity has failed to comply with this section, the Commissioner shall issue and serve upon the person or entity a statement of the charges in that respect and a notice of hearing to be held at the time and place fixed in the notice, which shall not be less than 10 days after the date of service of the notice. If, after hearing, the Commissioner finds that the person or entity is in violation of this section, the Commissioner shall reduce the finding to writing and issue and serve upon the person or entity an order requiring the person or entity to cease and desist from engaging in the violation. A person or entity required to cease and desist pursuant to this section may obtain a review of the cease and desist order in accordance with the procedures set forth in G.S. 58-63-35. A person or entity found to be in violation of this section shall be subject to civil monetary penalties for violations committed on and after the date the person or entity received the statement of charges and notice of hearing from the Commissioner.

(8) The Commissioner of Insurance shall have the authority granted by this Chapter to enforce violations of this section, including additional authority provided in this section.

(9) The Attorney General shall bring such actions as are necessary to enforce or prevent violations of this section, either through representation of the Commissioner of Insurance or otherwise."

Section 2. If any provision of this act or the application of this act to any person or circumstance is held invalid, the other provisions or applications of this act shall be given effect without the invalid provisions or applications.

Section 3. This act applies to every health benefit plan as defined in Section 1 of this act that is delivered, issued for delivery, or renewed on or after October 1, 1997. For purposes of this act, renewal of a health benefit plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

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

North Carolina General Assembly
Legislative Services Office

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April 28, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Committee Counsel

RE: Senate Bill 866 (Prescription Drugs/Competition)

Senate Bill 866 provides that insurers (including HMOs and other health benefit plans, other than self-funded plans exempt under ERISA) that cover prescription drugs and pharmaceutical services cannot do the following:

(1) Prohibit a pharmacy from establishing its price for drugs or services or its operating hours (*subsection d*)

(2) Prohibit the insured from selecting a pharmacy of his or her choice (*subsection e*) or induce or financially coerce the insured in making that choice (*subsection f*). In addition, the insurer cannot do anything that promotes or recommends a particular pharmacy or group of pharmacies if the purpose is to influence the insured's choice of pharmacy. The following acts would be specifically prohibited: (a) reimbursing one pharmacy or group of pharmacies at higher rates than others for the same drugs or services and (b) giving an opinion to the insured on what a pharmacy's price should be or what the insured's copayment should be for the purpose of influencing the insured's choice of a pharmacy (*subsection i*).

(3) Prohibit a pharmacy from charging the insured for additional services that it renders (*subsection h*).

In addition, the bill provides that the insured is responsible for paying the difference between the price of the drug or service and the amount that the insurer will pay (*subsection g*).

The insurer must notify all of its insureds that drug benefits and pharmaceutical services are covered at any pharmacy that the insured chooses. The insurer is to provide this notification to insureds at regular intervals and to publish it in the plan

summary and other materials that mention benefits. If the insurer lists any pharmacies for insureds to use, it must list all pharmacies in the county or area in which the insured lives (*subsection j*).

A pharmacy can advertise in a "commercially reasonable manner" that it can redeem an insured's benefits under the insured's health benefit plan (*subsection k*).

The bill provides that health benefit plan provisions and contract provisions between an insurer and pharmacist that conflict with this act are void. A violation of this act creates a claim for damages, creates grounds for sanctions by the Commissioner of Insurance, and subjects the insurer to restitution, license suspension, and monetary civil penalties ranging from $1,000 to $10,000 per day. The bill also provides for the issuance of cease and desist orders (following notice an and opportunity for hearing) against insurers that violate the act (*subsection l*).

The act takes effect October 1, 1997, and applies to health benefit plans issued or renewed on or after that date.

K. 22

NORTH CAROLINA RETAIL MERCHANTS ASSOCIATION

Mailing Address: PO Box 176001 • Raleigh, North Carolina 27619

April 17, 1997

Senator R.C. Soles
Legislative Building Room 2022
Raleigh, NC 27601

Dear Senator Soles:

By this letter I am writing to ask for your support on **SB 866, Prescription Drugs/Competition.** Senator Rand has introduced this bill to help small independent pharmacies to continue to accept insurance contracts that require them to fill prescriptions below their actual purchase price.

Our independent pharmacist, who operate in a rural area, know that if they are forced out of business, few chain operators will find it worthwhile to purchase a store in an area of low population. This legislation will allow a consumer to choose to pay a slightly higher fee in order to deal with his local pharmacist. **This legislation will not interfere with the relationship between an insurance company and an insured. It simply allows a consumer to choose a pharmacist based on service and location, rather than on price alone.**

For example, according to the proposed bill, if an insurance company sets a "co-pay" at $5.00, the patient is only required to pay $5.00, regardless of the cost of the medication. However, the consumer may choose to frequent a pharmacy that provides other services, such as home delivery, charge accounts, or insurance filing - services that **are especially important to the elderly and those in rural areas.** For these additional important services, he may choose to pay his $5.00 co-pay plus a $2.00 fee for the service. This bill actually cuts both ways, a pharmacy may choose to decrease the cost of the co-pay in order to be more competitive with its competition.

These personal services are the soul of the independent pharmacy. Independent pharmacies are important to North Carolina consumers, and they are in danger of being lost forever. Passage of this legislation is good for consumers and pharmacists, and does no harm to the insurance industry.

Sincerely,

Fran E. Preston
President

FEP:cs

2400 Glenwood Avenue, Raleigh • (919) 787-9520 • Statewide Wats (800) 662-7211 • FAX (919) 783-7342

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President FRAN PRESTON *Raleigh*
General Counsel DON McCORQUODALE *Raleigh*
Corporate Secretary ANDREA MARON *Raleigh*

Organizations Opposing
HB796/SB866

AARP North Carolina State Legislative Committee
Aetna Health Plan of the Carolinas
Allied Signal, Inc.
Association of North Carolina Life Insurance Companies
Blue Cross and Blue Shield of NC
CIGNA Health Plans
Community Choice
Doctors Health Plan
Health Insurance Association of America
Healthsource North Carolina
Jefferson Pilot Insurance Company
Kaiser Foundation Health Plan of NC
Merck Medco Managed Care
Mid-South Insurance Company
North Carolina Association of Educators
North Carolina Association of Home Care
North Carolina Citizens for Business and Industry
North Carolina Health Access Coalition
North Carolina Retired Governmental Employees Association
North Carolina State AFL-CIO
North Carolina Textile Association
Optimum Choice
PARTNERS National Health Plans of NC
Principal Health Care of the Carolinas
Prudential Health Care System of NC
QualChoice of NC, Inc.
State Employees Association of North Carolina
United Healthcare of North Carolina
Wellness Plan of North Carolina
WellPath Community Health Plan
Weyerhaeuser Company

VISITOR REGISTRATION SHEET

COMMERCE 4-29-97

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
H A Landsberger	AARP
Coreen K. Daniel	State Legislative Comm. AARP
Sonia Schmidt	NCVCDC
SAM JOHNSON	ATTY
Scott	NC AFL-CIO
Doll 2 2	[illegible]
Lacy Baddour	NC DOC
Becky Porreca	"
Allen Cleary	North Carolina Credit + Collection Services
Bill Pox	North Carolina Retail Federation
Kevin Layne	"
Adam Searing	NC Health Access Coalition
Alice Garland	Electricities
Brenda Johnson	NC Equity
James Andrews	NC AFL-CIO
Michael B Shivar	NC Premium Finance Assoc
Ronnie Tew	NC Premium Finance Assoc
Tom Ross	Womble Carlyle S.R.
Sandy Sands	WCSP
Leslie Bullock	NCCBI
Bill Smith	FBR
PAUL MAHONEY	NC HMO ASSN

VISITOR REGISTRATION SHEET

Commerce Committee — 4-29-91

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Jim Blackburn	N.C. Assoc. of County Commissioners
Crystal Howard	Office of the Governor
[illegible]	NCSA
[illegible]	HMS
Con. Cowan	BPMNL
Polly Williams	AARP/NC Equity
Robert Paschal	Young, Moore & Henderson
Emily Haus Browne	NCHA
PEYTON MAYNARD	GPM
Tom Morrow	Sprint
Terry Desmond	GTE
Leigh H Hammond	NC Retired Gov't Employees Assn
Ilon Green	SEANC, INC
[illegible]	Mum & Va. Allen
[illegible]	
Jack Miller	NCATL
Charles Cranor	NCATL
Dan [illegible]	SCA
A. G. Kimbrell Jr.	Credit Bureau Collection Center
Frank Grais	N. C. Collection Assn.
SAEL GOLDSTEIN	NC COLLECTORS ASSN.

VISITOR REGISTRATION SHEET

Commerce Committee — 4-29-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
[illegible]	[illegible] - NBC
Jay Adams	CTBMA
[illegible]	CBAC
Rod Beard	National Assoc. of Credit Mgmt.
David Simmons	ZOA, PA
JOHN McARTHUR	DOJ
Mary Reed	NC Utilities Commission
Sam Kirby	"
Phil Lebaron	NC AG's office
Mabel Chestnut	AG's office
Wendy Mills	SEANC
[illegible]	Property & Casualty Assn of N.C.

MINUTES
SENATE COMMERCE COMMITTEE
April 30, 1997

A meeting of the Senate Commerce Committee was held on April 30, 1997, at 8:30 a.m. in Room 1027 of the State Legislative Building. Nineteen members were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Senator R. C. Soles, Jr. Chairman, called the meeting to order.

The following bills were considered by the Committee:

SB 892, AN ACT TO LIMIT THE RIGHT OF CERTAIN SHAREHOLDERS TO DISSENT FROM CORPORATE ACTIONS AND TO AMEND THE LAW GOVERNING OFFERS OF PAYMENT TO DISSENTERS.

Senator Soles, the sponsor of the bill, recognized former Senator Sandy Sands to explain it. Senator Sands said the legislation was a recommendation of a Select Committee of the Bar Association. It limits the right of certain shareholders to dissent from corporate actions and amends the law of offers to pay dissenters of corporate mergers. (See attached memorandum for more detailed information.)

Senator Carpenter moved that the S. B 892 be given a favorable report. Motion carried.

SB 408, AN ACT TO ENHANCE , ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY GENERATED BY MINOR POWER PRODUCERS OF FIVE MEGAWATTS OR LESS BY DIRECTING THE UTILITIES COMMISSION TO ADOPT RULES ALLOWING RESIDENTIAL ELECTRIC CONSUMERS AND ELECTRIC COOPERATIVES TO PURCHASE POWER DIRECTLY FROM THOSE PRODUCERS.

Senator Rand who was Chairman of a subcommittee on this bill said the subcommittee met on Monday afternoon with all interested parties, and a compromise reached between the parties relieves the Committee of any further action on the bill.

Senator Shaw moved that SB 408 be postponed indefinitely. Motion carried.

SB 953, AN ACT TO EXTEND THE TIME CORPORATIONS MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION.

Senator Webster, the bill sponsor, said the legislation gives a corporation two years from the time it was administratively dissolved to apply to the Secretary of State for reinstatement. (See attached memorandum for further information on the bill.)

Senator Reeves moved that SB 953 be given a favorable report. Motion carried.

SB 777, AN ACT TO ALLOW LICENSEES TO ADJUST CERTAIN INTEREST RATES AND LOAN CEILING, TO COLLECT ATTORNEY FEES AND COURT COSTS IN THE CASE OF DEFAULT, AND TO MAINTAIN RECORDS IN THE FORM OF OPTICAL IMAGING.

Senator Rand reported that the subcommittee on the bill met twice due to the involvement of this piece of legislation. A Committee Substitute, which authorizes the creation of a study committee, was agreed upon and Senator Warren moved the adoption of the proposed Committee Substitute for SB 777. Motion carried.

Senator Rand moved that the Committee Substitute for SB 777 be given a favorable report and that it be referred to the Rules Committee where it can be included in the Study Commission Bill. Motion carried.

SB 819, AN ACT TO REQUIRE THE DEPARTMENT OF COMMERCE TO MAINTAIN A DATABASE OF DOWNTOWN PROPERTIES AVAILABLE FOR INDUSTRIAL RECRUITMENT.

Senator L. Shaw, the bill sponsor, said the bill was a recommendation of the LRC Downtown Revitalization Study Committee. It adds a provision to G. S. 143B-431 to require the Department of Commerce to maintain a computerized database of properties in downtown areas which are available for industrial recruitment. The information is to be available to the public, particularly to industry and local governments. (See attached memorandum for additional information.) Senators Lee and R. Shaw spoke in favor of the bill and Senator L. Shaw moved that S. B. 819 be given a favorable report. Motion carried.

SB 824, AN ACT TO ADD A DOWNTOWN DEVELOPMENT REPRESENTATIVE TO THE MEMBERSHIP OF THE BUILDING CODE COUNCIL.

Senator L. Shaw, sponsor of the bill, said it is also a recommendation of the LRC Downtown Revitalization Study Committee and increases the membership of the N. C. Building Code Council from 15 to 16 and provides that the new member will be a representative of a downtown development group or association. (See attached memorandum for additional information.)

Senator Rand moved that S. B. 824 be given a favorable report. Motion carried.

SB 564 - AN ACT TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, ACCOUNT NUMBER, AND TYPE OF ACCOUNT OF ANY CUSTOMER.

Senator Reeves, the bill sponsor, offered a Committee Substitute for SB 564 and moved its adoption. Motion carried. Senator Reeves said the substitute bill took care of the concerns expressed by members at a previous meeting. After some discussion, Senator Dalton moved that Committee Substitute for SB 564 be given a favorable report. Senator Kerr seconded the motion which carried.

SB 565, AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANK'S RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH AND TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES.

Senator Reeves, the sponsor, offered a Committee Substitute and moved its adoption. Motion carried.

Senator Reeves said the bill amends several provisions contained in Chapter 24 relating to interest rates. (See attached memorandum for complete explanation.) Senator R. L. Martin moved that the Committee Substitute for SB 565 be given a favorable report. Motion carried.

SB 577, AN ACT TO AMEND THE LAW GOVERNIING INSURANCE PREMIUM FINANCING.

Senator Reeves, the bill sponsor, offered a Committee Substitute for SB 577 and moved its adoption. Motion carried. (See attached memorandum for complete explanation of the substitute bill.) Senator Reeves amended the Committee Substitute for SB 577 (copy attached) and moved that it be given a favorable report, as amended. Senator Kincaid spoke in favor of the substitute, as amended. The motion carried.

COMMITTEE SUBSTITUTE FOR SB 973, AN ACT TO REQUIRE HEALTH MAINTENANCE ORGANIZATIONS TO PROVIDE CERTAIN INFORMATION.

This committee substitute bill was carried forward from the previous meeting, and Senator Rand sent forward an amendment offered by Senator Hoyle and moved its adoption. Motion carried. Senator Forrester then moved that the Committee Substitute for SB 973, as amended, be given a favorable report and that it be converted into a new committee substitute. Motion carried.

Ms. Polly Williams representing the AARP and also the N. C. Coalition on Aging spoke in favor of the amended bill.

SB 740, AN ACT TO AUTHORIZE THE GARNISHMENT OF WAGES AS AN ADDITIONAL MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS AND TO AUTHORIZE COLLECTION AGENCIES TO TAKE AN ASSIGNMENT OF CLAIMS AS REAL PARTIES IN INTEREST FOR THE PURPOSE OF BILLING, COLLECTION, AND BRINGING SUITS.

Senator Rand, the bill sponsor, offered a Committee Substitute for SB 740 and moved its adoption. Motion carried. Senator Rand sent forward a technical amendment (copy attached) and moved its adoption. Motion carried. (See attached memorandum for complete explanation of the bill and also supporting data.)

Because of a lack of time discussion could not be held on the bill, and the Chairman said it would be carried over until the next meeting of the Committee.

The meeting adjourned at 9:30 a.m.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, April 30, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **819** Downtown Database
Sequential Referral: None
Recommended Referral: None

S.B. **824** Membership/Building Code Council.
Sequential Referral: None
Recommended Referral: None

S.B. **892** Dissenters' Rights.
Sequential Referral: None
Recommended Referral: None

S.B. **953** Corporate Reinstatement
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **361** Expand Information Highway Uses.
Draft Number: PCSA749
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **577** Insurance Premium Financing
Draft Number: PCS8693
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. 777 Adjust Interest Rates and Loan Ceilings.

Draft Number:	PCS4595
Sequential Referral:	None
Recommended Referral:	Rules Committee
Long Title Amended:	Yes

TOTAL REPORTED: 7

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, April 30, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **564** Amend Financial Privacy Act.

Draft Number:	PCS1800
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **565** Variable Rate Loans.

Draft Number:	PCS2748
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **973** HMO Info.

Draft Number:	PCS6674
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 892

Short Title: Dissenters' Rights. (Public)

Sponsors: Senator Soles.

Referred to: Commerce.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE RIGHT OF CERTAIN SHAREHOLDERS TO DISSENT FROM CORPORATE ACTIONS AND TO AMEND THE LAW GOVERNING OFFERS OF PAYMENT TO DISSENTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-13-02 is amended by adding a new subsection to read:

"(c) Notwithstanding any other provision of this Article, there shall be no right of dissent in favor of holders of shares of any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or share exchange or the sale or exchange of property is to be acted on, were (i) listed on a national securities exchange or (ii) held by at least 2,000 record shareholders, unless in either case:

(1) The articles of incorporation of the corporation issuing the shares provide otherwise;

(2) In the case of a plan of merger or share exchange, the holders of the class or series are required under the plan of merger or share exchange to accept for the shares anything except:

a. Cash;

b. Shares, or shares and cash in lieu of fractional shares of the surviving or acquiring corporation, or of any other corporation which, at the record date fixed to determine the shareholders entitled to receive notice of and vote at the meeting at which the plan of merger or share exchange is to be acted on, were either listed subject to notice of issuance

on a national securities exchange or held of record by at least 2,000 record shareholders; or

c. A combination of cash and shares as set forth in sub-subdivisions a. and b. of this subdivision."

Section 2. G.S. 55-13-25 reads as rewritten:

"**§ 55-13-25. Offer of payment.**

(a) As soon as the proposed corporate action is taken, or ~~upon~~ within 30 days after receipt of a payment demand, the corporation shall offer to pay each dissenter who complied with G.S. 55-13-23 the amount the corporation estimates to be the fair value of his shares, plus interest accrued to the date of ~~payment, and shall pay this amount to each dissenter who agrees in writing to accept it in full satisfaction of his demand.~~ payment.

(b) The ~~offer of~~ payment ~~must~~ shall be accompanied by:

(1) The corporation's most recent available balance sheet as of the end of a fiscal year ending not more than 16 months before the date of offer of payment, an income statement for that year, a statement of cash flows for that year, and the latest available interim financial statements, if any;

(2) ~~A statement of the corporation's estimate of~~ An explanation of how the corporation estimated the fair value of the shares;

(3) An explanation of how the interest was calculated;

(4) A statement of the dissenter's right to demand payment under G.S. 55-13-28; and

(5) A copy of this Article."

Section 3. G.S. 55-13-30 reads as rewritten:

"**§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the earlier of (i) the date ~~of his~~ payment ~~demand~~ is made under ~~G.S. 55-13-28~~ G.S. 55-13-25, or (ii) the date of the dissenter's payment demand under G.S. 55-13-28 and petition the court to determine the fair value of the shares and accrued interest. ~~Upon service upon it of the petition filed with the court, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.~~ A dissenter who takes no action within the 60-day period shall be deemed to have withdrawn his dissent and demand for payment.

~~(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.~~

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as

in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. However, in a proceeding by a dissenter in a public corporation, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

Section 4. This act becomes effective October 1, 1997, and applies to corporate actions to which shareholders may dissent occurring on or after that date.

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April 30, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **SENATE BILL 892 - DISSENTERS' RIGHTS** - Senator Soles

Senate Bill 892 would limit the right of certain shareholders to dissent from corporate actions and amends the law of offers to pay dissenters of corporate mergers.

Section 1 adds a new section to the corporate law which provides that shareholders in stock listed on a national stock exchanges or held by at least 2000 shareholders do not have a right of dissent at a meeting at which a plan of merger or share exchanges or the sale or exchange of the property is to be acted on unless the articles of incorporation provide otherwise or the plan of merger or share exchange requires the shareholder to accept anything other than cash, or shares and cash, for their interest in the corporation.

Section 2 amends the time in which the dissenter is entitle to be paid to limit the time to as soon as the proposed corporate action is taken or within 30 days of payment demand. Additionally the payment must be accompanied by an explanation of how the corporation estimated the fair value of the shares being acquired.

Section 3 amends the law that gives the dissenters the right to petition the court to determine the fair value of the corporation's shares. The change provides that if a dissenter fails to commence an action within 60 days of the date payment is made or the payment demand is made, the shareholder is deemed to have withdrawn his dissent and demand for payment.

The bill becomes effective October 1, 1997 and applies to corporate actions to which shareholders may dissent on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 408
Proposed Committee Substitute S408-CSLL-001

Short Title: Renewable Resource Energy. (Public)

Sponsors:

Referred to: Commerce.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE, ENSURE, AND PROTECT THE PUBLIC'S RIGHT TO CONTINUED ACCESS TO RENEWABLE RESOURCE ENERGY GENERATED BY MINOR POWER PRODUCERS OF FIVE MEGAWATTS OR LESS BY DIRECTING THE UTILITIES COMMISSION TO ADOPT RULES ALLOWING RESIDENTIAL ELECTRIC CONSUMERS AND ELECTRIC COOPERATIVES TO PURCHASE POWER DIRECTLY FROM THOSE PRODUCERS.

Whereas, it is in the public interest to encourage small business development in the area of electric energy generation and to enhance the continued economic feasibility of the production of renewable energy at power production facilities producing five megawatts or less of electricity; and

Whereas, the operation of such power production facilities helps to curtail the need for facilities operating on fossil fuels; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3 is amended by adding a new subdivision to read:

"(16b) 'Minor power producer' means a person or corporation owning or operating a hydroelctric production facility using renewable resource energy with a power production capacity that does not exceed 5 megawatts of electricity,

and located at a dam existing prior to January 1, 1997."

Section 2. G.S. 62-3(23) is amended by adding a new sub-subdivision to read:

"k. The term 'public utility' shall not include a minor power producer as defined in subdivision (16b) of this section."

Section 3. Article 3 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-53. Electricity directly from minor power producers.

(a) The Commission shall adopt rules allowing residential electric consumers and electric cooperatives to purchase electric power generated by minor power producers directly from those producers. The Commission shall inform the general public of the availability of electric power directly from minor power producers.

(b) Rules adopted under this section shall require a public utility furnishing electric service to effect delivery of electric power produced by minor power producers with which the utility is interconnected to residential electric consumers or electric membership corporations and to charge those minor power producers just and reasonable fees for connection to the public utility's grid. This connection shall include metering of facilities necessary to measure in kilowatt hours the amount of power delivered to the utility grid by the minor power producer, payment of administrative costs directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operation with the minor power producer, to the extent that those costs exceed the costs the public utility would have incurred in the absence of the minor power producer, and transmission, distribution, delivery, safety provisions, and other matters necessary to implement this section. The Commission shall determine the amount of and schedule for payments of interconnection costs, but the fee for interconnection shall not exceed twenty percent (20%) of the sale price of the electrical energy delivered by the public utility.

(c) A minor power producer may petition the Commission to establish the terms and conditions of interconnection with a public utility furnishing electric service. The Commission shall require the public utility to provide specifications sufficiently detailed to permit construction of the interconnection facility to a reasonable standard or instruct the public utility to accomplish the interconnection. The design and cost of the interconnection may not be discriminatory in relation to other

interconnection facilities of similar capacity and purpose. The cost of interconnection equipment and its installation shall be paid by the minor power producer requesting the interconnection.

(d) The sale price per kilowatt hour of electric power produced by a minor power producer and sold to a residential consumer shall be equal to the system-wide, average annual price approved by the Commission, including all ancillary charges, of residential electric power per kilowatt hour paid by residential consumers for the applicable utility. The sale price per kilowatt hour of electric power produced by a minor power producer and sold to an electric membership corporation shall be a negotiated price agreed upon by the purchasing electric membership corporation and the small power producer."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 953

Short Title: Corporate Reinstatement. (Public)

Sponsors: Senators Webster; and Cooper.

Referred to: Commerce.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE TIME CORPORATIONS MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of Chapter 539 of the 1995 Session Laws, as amended by Section 15.1(b) of Chapter 17 of the Session Laws of the 1996 Second Extra Session, reads as rewritten:

"Sec. 7. Effective ~~July 1, 1997,~~ July 1, 1998, G.S. 55-14-22(a), as amended by Section 6 of this act, reads as rewritten:

'(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(3) Reserved.

(4) Repealed by Session Laws 1995, c. 539, s. 6.'"

Section 2. Section 38(b) of Chapter 539 of the 1995 Session Laws, as amended by Section 15.1(c) of Chapter 17 of the Session Laws of the 1996 Second Extra Session reads as rewritten:

"(b) Section 7 of this act becomes effective ~~July 1, 1997,~~ July 1, 1998, and applies to applications for reinstatement on or after that date. Section 25 of this act becomes effective July 1, 1996, and applies to proceedings commenced on or after that date."

Section 3. This act becomes effective June 30, 1997.

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April 29, 1997

MEMORANDUM

TO: Senate Commerce Committtee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 953 (Corporate Reinstatement)

Senate Bill 953 postpones until July 1, 1998 the law that will, when it takes effect, give a corporation two years from the time it was administratively dissolved to apply to the Secretary of State for reinstatement. The current law has no time limit for applying for reinstatement, but the two-year time limit is scheduled to come into effect July 1, 1997. The bill delays it one additional year.

The Secretary of State can administratively dissolve a corporation for failure to file its annual report, pay penalties and fees, maintain a registered agent, notify the Secretary of a change of agent, or respond to interrogatories from the Secretary. A corporation is given an opportunity to cure these problems to avoid administrative dissolution. A corporation can also be administratively dissolved if its corporate period of duration stated in its articles of incorporation has expired.

Note: The Senate Commerce Committee earlier this year approved a bill *(Senate Bill 158)* recommended by the General Statutes Commission that, among other things, gives corporations that are administratively dissolved *five* years in which to apply for reinstatement.

S953-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 777

Short Title: Adjust Interest Rates and Loan Ceilings. (Public)

Sponsors: Senator Lee.

Referred to: Commerce.

April 9, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW LICENSEES TO ADJUST CERTAIN INTEREST RATES AND LOAN CEILINGS, TO COLLECT ATTORNEY FEES AND COURT COSTS IN THE CASE OF DEFAULT, AND TO MAINTAIN RECORDS IN THE FORM OF OPTICAL IMAGING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-166(a) reads as rewritten:

"(a) Scope. -- No person shall engage in the business of lending in amounts of ~~ten thousand dollars ($10,000)~~ twenty-five thousand dollars ($25,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word 'lending' as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans."

Section 2. G.S. 53-176 reads as rewritten:

"**§ 53-176. Optional rates, maturities and amounts.**

In lieu of making loans in the amount and at the charges stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in installments not exceeding ~~ten thousand dollars ($10,000)~~ twenty-five thousand dollars ($25,000) and which shall not be repayable in less than six months or more than 84 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments

and to charge and collect interest in connection ~~therewith which shall not exceed the following actuarial rates:~~

~~(1) With respect to a loan not exceeding seven thousand five hundred dollars ($7,500), thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding one thousand dollars ($1,000) and eighteen percent (18%) per annum on the remainder of the unpaid principal balance.~~

therewith. On the part of the unpaid balance not exceeding five thousand dollars ($5,000), interest shall not exceed the actuarial rate of twenty-nine percent (29%) per annum. On the remainder of the unpaid balance, interest shall not exceed the actuarial rate of eighteen percent (18%) per annum. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

~~(2) With respect to a loan exceeding seven thousand five hundred dollars ($7,500), eighteen percent (18%) per annum on the outstanding principal balance.~~

In addition to the interest permitted in this section, a licensee may assess at closing a reasonable credit investigation charge as agreed upon by the parties, not to exceed the actual cost of the credit investigation; provided that such charges may not be assessed more than twice in any 12-month period. The Commissioner of Banks may review charges assessed pursuant to this section and may adopt appropriate rules in accordance with G.S. 53-185.

The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section.

Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and on date of such notification begin making loans regulated by this section for the following 12 months. Annually after such election a licensee may elect to make loans in accordance with this section unless the licensee notifies in writing the Commissioner of its intention to terminate such election.

The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty.

No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all ~~of his or their~~ offices and locations in this State."

Section 3. G.S. 53-180(e) reads as rewritten:

"(e) Limitation on Attorney's Fees. -- With respect to a loan made pursuant to the provisions of G.S. 53-173, the agreement may not provide for payment by the borrower of attorney ~~fees.~~ fees, except court and collection costs in the case of default by the borrower."

Section 4. G.S. 53-182(b) reads as rewritten:

"(b) Upon payment of any loan in full, a licensee shall cancel and return to the borrower, within a reasonable length of time, originals or copies of any note, assignment, mortgage, deed of trust, or other instrument securing ~~such~~ the loan, which no longer secures any indebtedness of the borrower to the licensee."

Section 5. G.S. 53-184(a) reads as rewritten:

"(a) Each licensee shall maintain all books and records relating to loans made under this Article required by the Commissioner of Banks to be kept, and the Commissioner, ~~his~~ the Commissioner's deputy, or duly authorized examiner or agent or employee is authorized and empowered to examine ~~such~~ the records at any reasonable time. ~~Such books~~ Books and records may be maintained in the form of magnetic tape, magnetic ~~disk~~ disk, optical image disk, or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner of Banks; provided, however, that ~~such~~ the books and records so kept must be convertible into clearly legible tangible documents within a reasonable time. Any licensee having more than one licensed office may maintain ~~such~~ the required books and records at a location other than the licensed office location if ~~such~~ the location is approved by the Commissioner; provided that, ~~upon such requirements as may be imposed by the Commissioner of Banks,~~ the Commissioner of Banks may require that there shall be available to the borrower at each licensed location or such other location convenient to the borrower, as designated by the licensee, complete loan information; and provided further that ~~such~~ the books and records of each licensed office shall be clearly segregated. When a licensee maintains its books and records outside of North Carolina, the licensee shall make them available for examination at the place where they are maintained and shall pay for all reasonable and necessary expenses incurred by the Commissioner in conducting such examination. Where the data processing for any licensee is performed by a person other than the licensee, the licensee shall provide to the Commissioner of Banks a copy of a binding agreement between the licensee and the data processor which allows the Commissioner of Banks, ~~his~~ the Commissioner's deputy, or duly authorized examiner or agent or employee to examine that particular data processor's activities pertaining to the licensee to the same extent as if such services were being performed by the licensee on its own premises; and, notwithstanding the provisions of G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all costs and expenses incurred by ~~him~~ the Commissioner in ~~such~~ the examination."

Section 6. This act becomes effective October 1, 1997, and applies to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 777
Proposed Committee Substitute S777-PCS4595

Short Title: Adjust Interest Rates and Loan Ceilings. (Public)

Sponsors:

Referred to:

April 9, 1997

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY WHETHER TO ALLOW CONSUMER FINANCE LICENSEES TO ADJUST CERTAIN INTEREST RATES AND LOAN CEILINGS, AND OTHER ISSUES RELATED TO THE CONSUMER FINANCE INDUSTRY.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission is authorized to study various issues related to the consumer finance industry, including the advisability of allowing licensees to adjust certain interest rates and loan ceilings; allowing agreements to provide that borrowers must pay court and collection costs in the case of default; and allowing licensees to maintain records in the form of optical image disks.

Section 2. The Commission may make an interim report, including any legislative proposals, to the 1998 Regular Session of the 1997 General Assembly and a final report, including any legislative proposals, to the 1999 General Assembly.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 777
Proposed Committee Substitute
S777-CSRO-002
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Adjust Interest Rates and Loan Ceilings. (Public)

Sponsors:

Referred to:

April 9, 1997

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY WHETHER TO ALLOW CONSUMER FINANCE LICENSEES TO ADJUST CERTAIN INTEREST RATES AND LOAN CEILINGS, AND OTHER ISSUES RELATED TO THE CONSUMER FINANCE INDUSTRY.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission is authorized to study various issues related to the Consumer Finance industry, including the advisability of allowing licensees to adjust certain interest rates and loan ceilings; allowing agreements to provide that borrowers must pay court and collection costs in the case of default; and allowing licensees to maintain records in the form of optical image disks.

Section 2. The Commission may make an interim report, including any legislative proposals, to the 1998 Regular Session of the 1997 General Assembly and a final report, including any legislative proposals, to the 1999 General Assembly.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 819*

Short Title: Downtown Database. (Public)

Sponsors: Senators Shaw of Cumberland; Blust, Carpenter, Jordan, Lucas, Martin of Guilford, Shaw of Guilford, and Weinstein.

Referred to: Commerce.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF COMMERCE TO MAINTAIN A DATABASE OF DOWNTOWN PROPERTIES AVAILABLE FOR INDUSTRIAL RECRUITMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-431 is amended by adding a new subsection (c1) to read:

"(c1) The Department of Commerce shall maintain a computerized database of downtown properties available for industrial recruitment and shall make information contained in the database available to the public including industry, municipalities, and counties."

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

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April 28, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 819 - Downtown Database.**

Senate Bill 819 was recommended by the Downtown Revitalization Study Committee. The bill adds a provision to G.S. 143B-431 to require the Department of Commerce to maintain a computerized database of properties in downtown areas which are available for industrial recruitment. The information is to be available to the public, particularly to industry and local governments.

The Committee found that a database in the Department of Commerce of downtown properties available for industrial use would provide valuable assistance to industries interested in locating in downtown areas and to local governments in recruiting such businesses. Currently, there is no central location where such information can be obtained on a Statewide basis. The Committee concluded that since downtown areas already possess the water, sewer, electric. telecommunications and road infrastructures necessary for business and industry, the State's past investments in these infrastructures areas are well served by the recruitment of business to downtowns.

This act would become effective July 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 824*

Short Title: Membership/Building Code Council. (Public)

Sponsors: Senators Shaw of Cumberland; and Lucas.

Referred to: Commerce.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO ADD A DOWNTOWN DEVELOPMENT REPRESENTATIVE TO THE MEMBERSHIP OF THE BUILDING CODE COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-136(a) reads as rewritten:

"(a) Creation; Membership; Terms. -- There is hereby created a Building Code Council, which shall be composed of ~~15~~ 16 members appointed by the Governor, consisting of one registered architect, one licensed general contractor, one registered architect or licensed general contractor specializing in residential design or construction, one registered engineer practicing structural engineering, one registered engineer practicing mechanical engineering, one registered engineer practicing electrical engineering, one licensed plumbing and heating contractor, one municipal or county building inspector, one licensed liquid petroleum gas dealer/contractor involved in the design of natural and liquid petroleum gas systems who has expertise and experience in natural and liquid petroleum gas piping, venting and appliances, a representative of the public who is not a member of the building construction industry, a licensed electrical contractor, a registered engineer on the engineering staff of a State agency charged with approval of plans of State-owned buildings, a municipal elected official or city manager, a county commissioner or county manager, a representative of a downtown development group or association, and an active member of the North Carolina fire service with expertise in fire safety. In selecting the municipal and county members, preference should be given to members who qualify as either a registered architect, registered engineer, or licensed general contractor. Of the members initially appointed by the Governor, three shall serve for

terms of two years each, three shall serve for terms of four years each, and three shall serve for terms of six years each. Thereafter, all appointments shall be for terms of six years. The Governor may remove appointive members at any time. Neither the architect nor any of the above named engineers shall be engaged in the manufacture, promotion or sale of any building material, and any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the Council. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Council.

The Governor may make appointments to fill the unexpired portions of any terms vacated by reason of death, resignation, or removal from office. In making such appointment, he shall preserve the composition of the Council required above."

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

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April 28, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 824 - Membership/Building Code Council.**

Senate Bill 824 is a recommendation of the LRC Downtown Revitalization Study Committee. It increases the membership of the North Carolina Building Code Council from 15 to 16 and provides that the new member will be a representative of a downtown development group or association. All member of the Building Code Council are appointed by the Governor.

This act would become effective October 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 564

Short Title: Amend Financial Privacy Act. (Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, ACCOUNT NUMBER, AND TYPE OF ACCOUNT OF ANY CUSTOMER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53B-8 reads rewritten:

"**§ 53B-8. Disclosure of financial records.**

No financial institution or its officer, employee, or agent may disclose a customer's financial record to a government authority except as provided in this Chapter. This section does not prohibit a financial institution from giving notice of or disclosing a financial record to a government authority, as defined in G.S. 53B-2(4), to the same extent as is authorized with respect to federal government authorities in the Right to Financial Privacy Act § 1103(d), 12 U.S.C. § 3403(d). Nothing in this Chapter shall prohibit a financial institution or its officer, employee, or agent from disclosing the name, address, account number, and type of account of any customer or from notifying a government authority that the financial institution or its officer, employee, or agent has information that may be relevant to a possible violation of law or regulation. The information shall be limited to a description of the suspected illegal activity and the name or other identifying information concerning any individual, corporation, or account involved in the activity. Any financial institution or its officer, employee, or agent making a disclosure of information pursuant to this section shall not be liable to the customer under the laws and rules of the State of North Carolina or any political subdivision of the State for disclosure or for failure to notify the customer of the disclosure."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 564
Proposed Committee Substitute S564-PCS1800

Short Title: Amend Financial Privacy Act. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, AND TYPE OF ACCOUNT OF ANY CUSTOMER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53B-8 reads as rewritten:

"**§ 53B-8. Disclosure of financial records.**

No financial institution or its officer, employee, or agent may disclose a customer's financial record to a government authority except as provided in this Chapter. This section does not prohibit a financial institution from giving notice of or disclosing a financial record to a government authority, as defined in G.S. 53B-2(4), to the same extent as is authorized with respect to federal government authorities in the Right to Financial Privacy Act § 1103(d), 12 U.S.C. § 3403(d). Nothing in this Chapter shall prohibit a financial institution or its officer, employee, or agent from <u>disclosing to a government authority the name, address, and existence of an account of any customer or from</u> notifying a government authority that the financial institution or its officer, employee, or agent has information that may be relevant to a possible violation of law or regulation. The information shall be limited to a description of the suspected illegal activity and the name or other identifying information concerning any individual, corporation, or account involved in the activity. Any financial institution or its officer, employee, or agent making a disclosure of information pursuant to this section shall not be liable to the customer under the laws and rules of the State of

North Carolina or any political subdivision of the State for disclosure or for failure to notify the customer of the disclosure."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 565

Short Title: Variable Rate Loans. (Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANK'S RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH AND TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1(c) reads as rewritten:

"(c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of this section on that date. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the greater of the rate

announced by the Commissioner in (i) the preceding calendar ~~month.~~ month or (ii) the calendar month preceding that in which the rate is varied or adjusted."

Section 2. G.S. 24-1.1C and G.S. 24-1.2 are repealed.

Section 3. This act becomes effective October 1, 1997, and applies to loans made on or after that date, and Section 1 of this act applies to variations or adjustments in rates occurring on or after that date regardless of the date on which the loan was made.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 565
Proposed Committee Substitute S565-PCS2748

Short Title: Variable Rate Loans. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANK'S RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH AND TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1(c) reads as rewritten:

"(c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of subsection (a) of this section on that date. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall

be the greater of the rate announced by the Commissioner in (i) the preceding calendar ~~month.~~ month or (ii) the calendar month preceding that in which the rate is varied or adjusted."

Section 2. G.S. 24-1.1C and G.S. 24-1.2 are repealed.

Section 2.1. G.S. 24-1.2A reads as rewritten:

"**§ 24-1.2A. Equity lines of credit.**

(a) Notwithstanding any other provision of this Chapter, the parties to an equity line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which shall not exceed the maximum rates permitted under ~~G.S. 24-1.2(2a);~~ G.S. 24-1.1(c); provided, however, that the parties may contract for interest rates which shall be adjustable or variable, so long as for adjustable or variable rate contracts the rate in effect for a given period does not exceed the maximum rate permitted under ~~G.S. 24-1.2(2a)~~ G.S. 24-1.1(c) for the same period.

(b) Fees may be charged on equity lines of credit which in the aggregate, over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00)."

Section 3. This act becomes effective October 1, 1997, and applies to loans made on or after that date, and Section 1 of this act applies to variations or adjustments in rates occurring on or after that date regardless of the date on which the loan was made.

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April 9, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman,
Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **Senate Bill 565 - Variable Rate Loans.**

Senate Bill 565 amends several provision contained in Chapter 24 relating to interest rates. Section 1 of the bill amends G.S. 24-1.1(c) which deals with the contractual interest rate on certain loans of $25,000 or less. Currently, the law provides that if the parties agree to vary or adjust the rate during a month during the term of the loan, the maximum rate of interest shall be the rate announced by the Commissioner of Banks in the preceding calendar month. The Commissioner is authorized to set the rate on the fifteenth of each month for nonvariable rate loans. The Commissioner's rate shall be the greater of the rate for six month Treasury bills plus 6% (rounded to the nearest ½ of 1%) or 16%.

This bill would allow variable rates to be adjusted on a basis other than monthly. It provides that the maximum rate of interest permitted would be the greater of the rate announced by the Commissioner in the preceding calendar month or the calendar month preceding that in which the rate is varied or adjusted.

Section 2 of the bill repeals two sections of Chapter 24. G.S. 24-1.1C authorizes variable rate loans for manufactured home loans. A federal statute passed in 1982 superseded this section. It contains comparable consumer protections and is the law relied upon by lenders making such loans. G.S. 24-1.2 sets limits on the rate of interest and fees which may be charged on certain types of installment loans. If this section is repealed, installment loans will be subject to the rate and fee limitations applicable to contract loans under G.S. 24-1.1. Currently, the two sections contain identical rate and fee limitations. Copies of sections 24-1.1C and 24-1.2 are attached to this memorandum.

This act would become effective October 1, 1997 and apply to loans made on or after that date, and section 1 would apply to variations or adjustments in rates occurring on or after that date regardless of the date on which the loan was made.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

cipal amount financed must be determined on a transaction-by-transaction basis, at least where the transactions are not contemporaneous, and not on the basis of the aggregate amount owing between the parties. Western Auto Supply Co. v. Vick, 47 N.C. App. 701, 268 S.E.2d 842, aff'd, 303 N.C. 30, 277 S.E.2d 360, aff'd on rehearing, 304 N.C. 191, 283 S.E.2d 101 (1981).

§ 24-1.1B: Repealed by Session Laws 1979, c. 335.

§ 24-1.1C. Manufactured home loans; variable interest rate loans authorized.

(a) For the purposes of this section, the terms listed herein shall have the following meanings:

(1) "Lender" means a person regularly engaged in the business of selling or financing manufactured homes (i) who is an arranger of credit, or (ii) who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment) and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(2) "Interest" means finance charge expressed as an annual percentage rate. The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the borrower or imposed directly or indirectly by the lender as an incident to or a condition of the extension of credit.

(3) "Manufactured home" shall mean a mobile home, as defined in G.S. 143-145(7), which is used as a residence, whether or not the home is affixed to real property.

(4) "Manufactured home loan" shall include both the credit sale of a manufactured home and a direct loan used to finance the purchase of a manufactured home, in which the seller or lender is secured by:

a. A security interest which is the first lien on a manufactured home and any personal property sold therewith as part of the home,

b. A first or second mortgage or deed of trust on real estate, or

c. A combination of these financing methods.

(b) A manufactured home loan may provide for a fixed rate of interest payable in substantially equal successive installments over a fixed term, or a manufactured home loan may provide that the rate of interest may be adjusted at certain regular intervals. In this latter event, the manufactured home loan shall be subject to the following provisions:

(1) Adjustments in the interest rate charged must be based on changes in a specific index, as set forth in the loan agreement, with the index base being fixed by the value of the index on the first day of the month in which the loan agreement is dated. The index may be only:

a. The monthly average yield on United States Treasury securities adjusted to a constant maturity of five years; or

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b. An index expressly approved by the Federal Home Loan Bank Board or by the Office of the Comptroller of the Currency, Department of the Treasury, for adjustable or variable interest rates on residential mortgage loans.

(2) Adjustments to the interest rate may not exceed one-half of one percent (1/2 of 1%) a year for any six-month period. If the stated regular interval for rate adjustments is a twelve-month period, or longer, rate adjustments may not exceed one percent (1%) a year.

(3) The rate of interest shall not increase or decrease during the six-month period beginning with the date of execution of the loan agreement, and at least six months shall elapse between changes.

(4) Adjustments (either up or down) to the rate of interest on each adjustment date shall, for the initial adjustment, be equal to the difference between the index value in effect on the first day of the second month preceding the adjustment date and the index value in effect on the first day of the month in which the loan is executed. For adjustments after the initial adjustment, adjustments shall be equal to the difference between the index value in effect on the first day of the second month preceding the adjustment date and the index value in effect on the first day of the second month preceding the date of the immediately preceding rate adjustment.

(5) Any increase in the rate of interest permitted by this section is optional with the lender. Decreases in the rate of interest are mandatory whenever the total decrease in the index value equals or exceeds one-fourth of one percentage point.

(5a) Any changes in the index which are not reflected in a rate adjustment may, by agreement of the parties, be carried over to subsequent rate adjustment periods, and, subject to the provisions of paragraph (b)(5) above, be implemented to the extent not offset by opposite movement in the index.

(6) By agreement of the parties, adjustments to the rate of interest may result in changes in the amount of regular installment payments due under the loan agreement, or in changes in the term of the loan agreement, or in a combination of such changes in amount and term.

(7) A lender shall allow a borrower to prepay in whole or in part at any time without a prepayment penalty.

(8) A lender may not charge any fees to, or assess any costs against, a borrower in connection with the processing of any rate adjustment, term adjustment or combination of rate and term adjustment.

(9) Before execution of a manufactured home loan agreement, the lender shall comply with all applicable requirements and disclosures pursuant to Part I of the Consumer Protection Act (Truth-In-Lending Act) 15 USC § 1601, et seq., as amended, and as implemented by Regulation Z promulgated by the Board of Governors of the Federal Reserve System. The required disclosures shall be made on the basis of the rate of interest in effect at the time the disclosure is made, assuming that each scheduled payment is made

on the date it is due and in the scheduled amount. Such disclosures shall include the following information:

a. The circumstances under which the rate may increase;
b. Any limitations on the increase;
c. The effect of an increase; and
d. An example of the payment terms that would result from an increase.

(10) The lender shall send written notification of any rate adjustment, by first class mail, postage prepaid, at least one month before the date that the new rate of interest will take effect. The notification shall comply with all applicable requirements of Part I of the Consumer Protection Act (Truth-In-Lending Act) 15 USC § 1601, et seq., as amended, and as implemented by Regulation Z promulgated by the Board of Governors of the Federal Reserve System. Such notification shall include:

a. The current and new rates of interest;
b. The index value for the month during which the manufactured home loan agreement was executed or, for adjustments after the initial adjustment, the index value used for the immediately preceding rate adjustment, and the index value used to calculate the new change in the rate of interest; and
c. The amounts of new installment payments, if any, and the remaining maturity.

(c) The provisions of Chapter 25A, the Retail Installment Sales Act shall apply to a variable rate consumer credit sale of a manufactured home, provided that:

(1) A variable rate manufactured home loan shall be subject to Chapter 25A except for G.S. 25A-33(4);
(2) The provisions of this section shall control, where inconsistent with the provisions of Chapter 25A (G.S. 25A-34 shall not be construed to limit variation in regular monthly payment amounts on loans under this section.); and
(3) Interest charges on variable rate manufactured home loans shall be computed and paid periodically as a percentage of the unpaid principal balance. This percentage may be computed for any period as the number of days actually elapsed, times the effective annual percentage rate, divided by 365; or this percentage may be computed monthly as the number of days elapsed based upon an assumption that every month has 30 days, times the effective annual percentage rate, divided by 360. In either case, scheduled monthly payments may assume a 30-day month. Payments may be applied first to accrued interest, then to principal. No default charge shall be assessed on loans under this section.
(4) Nothing in this section shall be construed to alter the federal preemption allowing unlimited interest rate ceilings as they apply to first mortgage loans. (1981, c. 970, s. 1; 1981 (Reg. Sess., 1982), c. 1196, ss. 1-5.)

§ 24-1.1D: Expired.

Editor's Note. — This section wa
acted by Session Laws 1981, c. 465,

§ 24-1.2. Installment

Except as otherwise provi
law, the parties to a loan, p
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§ 24-1.1D: Expired.

Editor's Note. — This section was enacted by Session Laws 1981, c. 465, s. 2, and pursuant to s. 3 of that act, expired on July 1, 1983.

§ 24-1.2. Installment rates and fees.

Except as otherwise provided in this Chapter or other applicable law, the parties to a loan, purchase money loan, advance, commitment for a loan, or forbearance, may contract in writing for the payment of interest not in excess of:

(1) On installment loans not exceeding five thousand dollars ($5,000), which are not secured by a security interest in any degree on real property, which are for periods of not less than six months nor more than 120 months, which are repayable in substantially equal consecutive monthly payments, which shall not be collected in advance, and which shall be computed monthly on the outstanding principal balance, the rate shall not exceed the rates set under subdivision (2a) of this section; provided, a minimum charge of ten dollars ($10.00) or one dollar ($1.00) per payment may be agreed to and charged in lieu of interest. The borrower may prepay all or any part of this loan without penalty. The due date of the first monthly payment shall not be more than 45 days following disbursement of funds under any such installment loan.

(2) On installment loans not exceeding twenty-five thousand dollars ($25,000), which are not secured by a first security instrument on real property, and which are payable at least quarterly in substantially equal payments of principal and interest, or in substantially equal payments of principal, the rate of interest, computed on the outstanding balance, shall not exceed the rate set under subdivision (2a) of this section: provided a minimum charge of ten dollars ($10.00) or one dollar ($1.00) per payment may be agreed to and charged in lieu of interest. The borrower may prepay all or any part of the loan without penalty.

(2a) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivisions (1) and (2) of this section. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest

which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

(3), (4) Repealed by Session Laws 1979, c. 138, s. 3.

(5) Nothing in this section shall be construed to authorize the charging of interest on committed funds prior to the disbursement of said funds.

(6) Notwithstanding the foregoing provisions of this section, on an installment loan not exceeding twenty-five thousand dollars ($25,000) which is secured by a first lien on a residential manufactured home, the parties may contract in writing for the payment of interest as agreed upon by the parties; Provided, however, that this paragraph shall only apply if the parties would have been entitled to so contract by the provisions of section 501 of United States Public Law 96-221 and have complied with the regulations promulgated thereunder. The borrower may prepay all or any part of the loan without penalty.

For the purpose of this paragraph (6), a "residential manufactured home" means a mobile home as defined in G.S. 143-145(7) which is used as a dwelling.

(7) Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00).

(8) Any lender may charge a party to a loan or extension of credit not secured by real property governed by this section an origination fee not to exceed the greater of one quarter of one percent (1/4 of 1%) of the outstanding balance or fifty dollars ($50.00). (1969, c. 1303, s. 2; 1971, c. 448; c. 1122, ss. 1, 2; c. 1165; 1977, c. 778, ss. 2, 4; 1979, c. 138, ss. 2, 3; 1981, c. 464, s. 1; c. 934, s. 2; 1983, c. 126, s. 3; 1985, c. 663, s. 2; 1987, c. 853, s. 4; 1991, c. 506, s. 3.)

Effect of Amendments. — The 1991 amendment, effective October 1, 1991, inserted "and fees" at the end of the catchline, and added subdivisions (7) and (8).

Legal Periodicals. — For article calling for a comprehensive federal consumer credit code, see 58 N.C.L. Rev. 1 (1979).

CASE NOTES

Cited in Equilease Corp. v. Belk Hotel Corp., 42 N.C. App. 436, 256 S.E.2d 836 (1979); Carter v. Holland (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

OPINIONS OF ATTORNEY GENERAL

As to the maximum rate of interest on a $50,000 loan secured by a first mortgage or first deed of trust on real property extending over less than ten years and repayable in installments, see the opinion of the Attorney General to

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 577

Short Title: Insurance Premium Financing. (Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING INSURANCE PREMIUM FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-35-30(a) reads as rewritten:

"(a) The licensee shall keep and use in his business ~~such~~ any books, accounts, and records ~~as~~ that will enable the Commissioner to determine whether ~~such~~ the licensee is complying with the provisions of this Article and with the rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in a card system, if any, for at least three years after making the final entry in respect to any insurance premium finance agreement recorded therein; provided, however, the preservation of photographic reproductions thereof or records in ~~photographic~~ photographic, imaging, microfilm, or microfiche form shall constitute compliance with this ~~requirement.~~ requirement by any licensee. The Commissioner may require of licensees under oath and in the form prescribed by him regular or special reports as he may deem necessary to the proper supervision of licensees under this Article."

Section 2. G.S. 58-35-50 reads as rewritten:

"**§ 58-35-50. Form, contents and execution of insurance premium finance agreements.**

(a) An insurance premium finance agreement shall be in writing, dated, signed by the insured, and the printed portion thereof shall be ~~in at least eight point type.~~ in type that is legible, as determined by rule. It shall contain the entire agreement of the parties with respect to the insurance contract, the premiums for which are advanced or to be advanced under it, and:

(1) At its top, the words 'INSURANCE PREMIUM FINANCE AGREEMENT' or similar wording in at least 10 point bold type; and the insurance premium finance company license number shall also appear, and:

(2) A notice in at least eight point bold type, reading as follows: 'NOTICE':

a. Do not sign this agreement before you read it.

b. You are entitled to a copy of this agreement.

c. Under the law, you have the right to pay off in advance the full amount dŭe and under certain conditions to obtain a partial refund of the service charge.

(b) An insurance premium finance agreement shall:

(1) Contain the following:

a. The name and place of business of the insurance agent or broker negotiating the related insurance ~~contract,~~ contract;

b. The ~~the~~ name of the insured and either the ~~residence or~~ residence, the place of ~~business~~ business, or any other mailing address of the insured as specified by ~~him,~~ the insured;

c. The ~~the~~ name and place of business of the insurance premium finance company to which installments or other payments are to be ~~made,~~ made;

d. A brief ~~a~~ description of the insurance ~~contract,~~ contract;

e. The ~~the~~ premiums for which are advanced or to be advanced under the ~~agreement,~~ agreement; and

f. The ~~the~~ amount of the premiums for such insurance contract; and

(2) Set forth the following ~~items:~~ items where applicable:

a. The total amount of the premiums;

b. The amount of the down payment;

c. The principal balance, which is the difference between items a and b;

d. The amount of the service charge;

e. The balance, ~~which is the sum of items c and d,~~ payable by the insured, meaning the sum of the amounts stated under items c. and d. of this subdivision.

f. the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(c) The items set forth in subsection (d) of this section need not be stated in the sequence or order ~~set forth above, inapplicable items may be omitted;~~ in which they appear and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(d) No insurance premium finance agreement shall be signed by an insured when it contains any blank space to be filled in after it has been signed; however, if the insurance contract, the premiums for which are advanced or to be advanced under the agreement, has not been issued at the time of its signature by the insured and it so provides, the name of the authorized insurer by whom such insurance contract is issued and the policy number and the due date of the first installment may be left blank and later inserted in the original of the agreement after it has been signed by the insured."

Section 3. G.S. 58-35-55(d) reads as rewritten:

"(d) The provisions of subsection (c) of this section apply if the premiums under only one insurance contract are advanced or are to be advanced under an insurance premium finance ~~agreement;~~ agreement. If ~~if~~ premiums under more than one insurance contract are advanced or are to be advanced under an insurance premium finance agreement, the service charge shall be computed from the earlier of (i) the date that the premium is advanced in behalf of the insured, (ii) the inception date of ~~such~~ the insurance contracts, or ~~from~~ (iii) the due date of ~~such premiums; however, not more than~~ the premiums. Only one minimum service charge shall apply to each insurance premium finance agreement."

Section 4. G.S. 58-35-65 reads as rewritten:

"**§ 58-35-65. Delivery of copy of insurance premium finance agreement to insured.**

Before the due date of the first installment payable under an insurance premium finance agreement, the insurance premium finance company holding the agreement or the insurance agent shall ~~deliver~~ cause to be delivered to the insured, or mail to ~~him~~ the insured at ~~his~~ the insured's address as shown in the agreement, a copy of the agreement."

Section 5. G.S. 58-35-80(b) reads as rewritten:

"(b) The amount of any such refund credit shall represent at least as great proportion of the service charge, if any, as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. Where the amount of the refund credit for anticipation of payment is less than ~~one dollar ($1.00),~~ five dollars ($5.00), no refund need be made."

Section 6. G.S. 58-35-85 reads as rewritten:

"**§ 58-35-85. Procedure for cancellation of insurance contract upon default; return of unearned premiums; collection of cash surrender value.**

When an insurance premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be cancelled unless the cancellation is effectuated in accordance with the following provisions:

(1) Not less than 10 days' written notice ~~be mailed~~ is sent by personal delivery, first-class mail, electronic mail, or facsimile transmission to the last known address of the insured or insureds shown on the insurance premium finance agreement of the intent of the

insurance premium finance company to cancel his or their insurance contract or contracts unless the defaulted installment payment is received. ~~A notice~~ Notification thereof shall also be ~~sent~~ provided to the insurance agent.

(2) After expiration of the 10 day period, the insurance premium finance company shall send the insurer a request for cancellation specifying the effective date of cancellation and shall mail a copy of the request for cancellation to the insured at his last known address as shown on the insurance premium finance ~~agreement.~~ agreement and to the agent. Upon request of the insurance company, ~~The~~ the premium finance company shall ~~include~~ furnish a copy of the power of ~~attorney with the request for cancellation if the insurer has not already received a copy of the power of attorney with the application.~~ attorney to the insurance company.

(3) Upon receipt of a copy of the request for cancellation notice by the insurer, the insurance contract shall be cancelled as of the date specified in the cancellation notice with the same force and effect as if the ~~aforesaid~~ request for cancellation had been submitted by the ~~insured himself,~~ insured, without requiring the return of the insurance contract or contracts.

(4) All statutory, regulatory, and contractual restrictions providing that the insured may not cancel ~~his~~ the insurance contract unless ~~he~~ the insured first satisfies the restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, an individual, or a person designated to receive the notice for said governmental agency, insurance carrier, or individual shall apply where cancellation is effected under the provisions of this section.

(4a) If an insurer receives notification from an insurance agent or premium finance company that the initial down payment for the premium being financed has been dishonored by a financial institution or otherwise unpaid, there is not a valid contract for insurance and the policy will be voided.

(5) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall promptly return whatever gross unearned premiums are due under the ~~contract~~ contract, computed pro rata, to the insurance premium finance company effecting the cancellation for the benefit of the insured or ~~insureds.~~ insureds, no later than 30 days after the effective date of cancellation. Whenever the return premium is in excess of the amount due the insurance premium finance company by the insured under the agreement, the excess shall be remitted promptly to the order of the insured, subject to the minimum service charge provided for in this Article. In the event that a premium is subject to an audit to determine the final premium amount, the gross unearned premium

shall be calculated upon the deposit premium and the insurer shall return the gross unearned premium, computed on a pro rata basis, to the premium finance company no later than 30 days after the effective date of cancellation.

(6) The provisions of this section relating to request for cancellation by the insurance premium finance company of an insurance contract and the return by an insurer of unearned premiums to the insurance premium finance company, also apply to the surrender by the insurance premium finance company of an insurance contract providing life insurance and the payment by the insurer of the cash value of the contract to the insurance premium finance company, except that the insurer may require the surrender of the insurance contract.

(7) The insurer shall not deduct from any return premiums any amount owed to the insurer for any other indebtedness owed to the insurer by the insured.

(8) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured as soon as possible, but in no event later than 30 days of receipt of the return premium, provided that no refund shall be required if it is in an amount less than five dollars ($5.00).

(9) In the event that a balance due the premium finance company remains on the account after the cancellation of the agreement, the outstanding balance may earn interest at the rate stated in the agreement until paid in full."

Section 7. G.S. 58-35-40 reads as rewritten:

"**§ 58-35-40. Rebates and inducements prohibited; assignment of insurance premium finance agreements.**

(a) No insurance premium finance ~~company, and no employee of such a~~ company shall pay, allow, or offer to pay or allow ~~in any manner whatsoever~~ to an insurance agent ~~or any employee of an insurance agent,~~ or to any other person, ~~or as an inducement to the financing of an insurance policy with the insurance premium finance company or after any such policy has been financed,~~ and no insurance agent or other person shall accept from a company, any rebate whatsoever, either from the service charge for financing specified in the insurance premium finance agreement or ~~otherwise, or~~ otherwise. No insurance premium finance company shall pay, allow, or offer to pay or allow to an insurance agent, and no insurance agent shall accept from a company, a rebate as an inducement to the financing of an insurance policy with the company. No insurance premium finance company shall give or offer to give to an insurance agent, and no insurance agent shall accept from a company, any valuable consideration or inducement of any ~~kind~~ kind, directly or indirectly, other than an article of merchandise not exceeding one dollar ($1.00) in value which shall have thereon the advertisement of the insurance premium finance ~~company; but an~~

company. An insurance premium finance company may purchase or otherwise acquire an insurance premium finance agreement ~~provided that it conforms to this Article in all respects,~~ from another insurance premium finance company with recourse against the insurance premium finance company on such terms and conditions as may be mutually agreed upon by the parties, if the agreement complies with the requirements of this Article. ~~and such terms~~ Terms and conditions of any agreement shall be subject to the approval of the Commissioner.

(b) No filing of the assignment or notice thereof to the insured shall be necessary to the validity of the written assignment of an insurance premium finance agreement as against creditors or subsequent purchases, pledges, or encumbrancers of the assignor.

(c) As used in this section, the term 'insurance premium finance company' includes employees of the company and the term 'insurance agent' includes employees of the insurance agent. The word 'company' means an insurance premium finance company."

Section 8. This act becomes effective October 1, 1997, and applies to premium finance agreements or contracts entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 577-PCS Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE V

Rep.)
) _____
Sen.)

moves to amend the bill on page 5, line 6-7

( ) WHICH CHANGES THE TITLE

by removing the overstrike from the word "contract" and deleting the phrase "contract, computed pro rata,"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 577
Proposed Committee Substitute S577-PCS8693

Short Title: Insurance Premium Financing. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING INSURANCE PREMIUM FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-35-30(a) reads as rewritten:

"(a) The licensee shall keep and use in his business ~~such~~ any books, accounts, and records ~~as~~ that will enable the Commissioner to determine whether ~~such~~ the licensee is complying with the provisions of this Article and with the rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in a card system, if any, for at least three years after making the final entry in respect to any insurance premium finance agreement recorded therein; provided, however, the preservation of photographic reproductions thereof or records in ~~photographic~~ photographic, imaging, microfilm, or microfiche form shall constitute compliance with this ~~requirement.~~ requirement by any licensee. The Commissioner may require of licensees under oath and in the form prescribed by him regular or special reports as he may deem necessary to the proper supervision of licensees under this Article."

Section 2. G.S. 58-35-50 reads as rewritten:

"**§ 58-35-50. Form, contents and execution of insurance premium finance agreements.**

(a) An insurance premium finance agreement shall be in writing, dated, signed by the insured, and the printed portion thereof shall be in at least eight point type. It shall contain the entire agreement of the parties with respect to the insurance contract, the premiums for which are advanced or to be advanced under it, and:

(1) At its top, the words 'INSURANCE PREMIUM FINANCE AGREEMENT' or similar wording in at least 10 point bold type; and the insurance premium finance company license number shall also appear, and:

(2) A notice in at least eight point bold type, reading as follows: 'NOTICE':

a. Do not sign this agreement before you read it.

b. You are entitled to a copy of this agreement.

c. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge.

(b) An insurance premium finance agreement shall:

(1) Contain the following:

a. The name and place of business of the insurance agent or broker negotiating the related insurance ~~contract,~~ contract;

b. The ~~the~~ name of the insured and either the ~~residence or~~ residence, the place of ~~business~~ business, or any other mailing address of the insured as specified by ~~him,~~ the insured;

c. The ~~the~~ name and place of business of the insurance premium finance company to which installments or other payments are to be ~~made,~~ made;

d. A brief ~~a~~ description of the insurance ~~contract,~~ contract;

e. The ~~the~~ premiums for which are advanced or to be advanced under the ~~agreement,~~ agreement; and

f. The ~~the~~ amount of the premiums for such insurance contract; and

(2) Set forth the following ~~items:~~ items where applicable:

a. The total amount of the premiums;

b. The amount of the down payment;

c. The principal balance, which is the difference between items a and b;

d. The amount of the service charge;

e. The balance, ~~which is the sum of items c and d,~~ payable by the insured, meaning the sum of the amounts stated under items c. and d. of this subdivision.

f. the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(c) The items set forth in subsection (b) of this section need not be stated in the sequence or order ~~set forth above, inapplicable items may be omitted;~~ in which they appear in that subsection, and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(d) No insurance premium finance agreement shall be signed by an insured when it contains any blank space to be filled in after it has been signed; however, if the insurance contract, the premiums for which are advanced or to be advanced under the agreement, has not been issued at the time of its signature by the insured and it so provides, the name of the authorized insurer by whom such insurance contract is issued and the policy number and the due date of the first installment may be left blank and later inserted in the original of the agreement after it has been signed by the insured."

Section 3. G.S. 58-35-55(d) reads as rewritten:

"(d) The provisions of subsection (c) of this section apply if the premiums under only one insurance contract are advanced or are to be advanced under an insurance premium finance ~~agreement;~~ agreement. If ~~if~~ premiums under more than one insurance contract are advanced or are to be advanced under an insurance premium finance agreement, the service charge shall be computed from the earlier of the following:

(1) The date that the premium is advanced on behalf of the insured.

(2) The inception date of ~~such~~ the insurance ~~contracts, or from due date of such premiums; however, not more than~~ contract.

Only one minimum service charge shall apply to each insurance premium finance agreement."

Section 4. G.S. 58-35-65 reads as rewritten:

"**§ 58-35-65. Delivery of copy of insurance premium finance agreement to insured.**

Before the due date of the first installment payable under an insurance premium finance agreement, the insurance premium finance company holding the agreement or the insurance agent shall ~~deliver~~ cause to be delivered to the insured, or mail to ~~him~~ the insured at ~~his~~ the insured's address as shown in the agreement, a copy of the agreement."

Section 5. G.S. 58-35-80(b) reads as rewritten:

"(b) The amount of any such refund credit shall represent at least as great proportion of the service charge, if any, as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. Where the amount of the refund credit for anticipation of payment is less than ~~one dollar ($1.00),~~ five dollars ($5.00), no refund need be made. This section does not relieve the premium finance company of its duty to report and deliver these unrefunded monies to the State Treasurer in accordance with G.S. 116B-29(b)."

Section 6. G.S. 58-35-85 reads as rewritten:

"**§ 58-35-85. Procedure for cancellation of insurance contract upon default; return of unearned premiums; collection of cash surrender value.**

When an insurance premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or

contracts shall not be cancelled unless the cancellation is effectuated in accordance with the following provisions:

(1) Not less than 10 days' written notice ~~be mailed~~ is sent by personal delivery, first-class mail, electronic mail, or facsimile transmission to the last known address of the insured or insureds shown on the insurance premium finance agreement of the intent of the insurance premium finance company to cancel his or their insurance contract or contracts unless the defaulted installment payment is received. ~~A notice~~ Notification thereof shall also be ~~sent~~ provided to the insurance agent.

(2) After expiration of the 10-day period, the insurance premium finance company shall send the insurer a request for cancellation specifying the effective date of cancellation and shall ~~mail~~ send ~~a copy of the request for~~ notice of the cancellation to the insured by personal delivery, first-class mail, electronic mail, electronic transmission or facsimile transmission at his last known address as shown on the records of the insurance premium finance ~~agreement.~~ company and to the agent. Upon written request of the insurance company, ~~The~~ the premium finance company shall ~~include~~ furnish a copy of the power of ~~attorney with the request for cancellation if the insurer has not already received a copy of the power of attorney with the application.~~ attorney to the insurance company. The written request shall be sent by mail, personal delivery, electronic mail, or facsimile transmission. The insurer's failure to comply with this request does not invalidate the cancellation.

(3) Upon receipt of a copy of the request for cancellation notice by the insurer, the insurance contract shall be cancelled as of the date specified in the cancellation notice with the same force and effect as if the ~~aforesaid~~ request for cancellation had been submitted by the ~~insured himself,~~ insured, without requiring the return of the insurance contract or contracts.

(4) All statutory, regulatory, and contractual restrictions providing that the insured may not cancel ~~his~~ the insurance contract unless ~~he~~ the insurer first satisfies the restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, an individual, or a person designated to receive the notice for said governmental agency, insurance carrier, or individual shall apply where cancellation is effected under the provisions of this section. If a mortgagee or other loss payee is shown on the insurance contract, the insurer shall notify the mortgagee or loss payee in accordance with G.S. 58-41-15(b).

(4a) If an insurer receives notification from an insurance agent or premium finance company that the initial down payment for the premium being financed has been dishonored by a financial

institution or is otherwise unpaid, there is not a valid contract for insurance and the policy will be voided.

(5) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall promptly return whatever gross unearned premiums are due under the contract to the insurance premium finance company effecting the cancellation for the benefit of the insured or ~~insureds.~~ insureds, no later than 30 days after the effective date of cancellation. Whenever the return premium is in excess of the amount due the insurance premium finance company by the insured under the agreement, the excess shall be remitted promptly to the order of the insured, subject to the minimum service charge provided for in this Article. In the event that a premium is subject to an audit to determine the final premium amount, the gross unearned premium shall be calculated upon the deposit premium and the insurer shall return the gross unearned premium to the premium finance company no later than 30 days after the effective date of cancellation.

(6) The provisions of this section relating to request for cancellation by the insurance premium finance company of an insurance contract and the return by an insurer of unearned premiums to the insurance premium finance company, also apply to the surrender by the insurance premium finance company of an insurance contract providing life insurance and the payment by the insurer of the cash value of the contract to the insurance premium finance company, except that the insurer may require the surrender of the insurance contract.

(7) The insurer shall not deduct from any return premiums any amount owed to the insurer for any other indebtedness owed to the insurer by the insured on any policy or policies other than those being financed under the premium finance agreement.

(8) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured as soon as possible, but in no event later than 30 days of receipt of the return premium, provided that no refund shall be required if it is in an amount less than five dollars ($5.00). This subdivision does not relieve the premium finance company of its duty to report and deliver these unrefunded monies to the State Treasurer in accordance with G.S. 116B-29(b).

(9) In the event that a balance due the premium finance company remains on the account after the cancellation of the agreement, the outstanding balance may earn interest at the rate stated in the agreement until paid in full."

Section 7. G.S. 58-35-40 reads as rewritten:

"**§ 58-35-40. Rebates and inducements prohibited; assignment of insurance premium finance agreements.**

(a) No insurance premium finance ~~company, and no employee of such a~~ company shall pay, allow, or offer to pay or allow ~~in any manner whatsoever~~ payment to an insurance agent ~~or any employee of an insurance agent,~~ or to any other person, ~~or as an inducement to the financing of an insurance policy with the insurance premium finance company or after any such policy has been financed,~~ and no insurance agent or other person shall accept from a company, any rebate whatsoever, either from the service charge for financing specified in the insurance premium finance agreement or ~~otherwise, or~~ otherwise. No insurance premium finance company shall pay, allow, or offer to pay or allow payment to an insurance agent, and no insurance agent shall accept from a company, a rebate as an inducement to the financing of an insurance policy with the company. No insurance premium finance company shall give or offer to give to an insurance agent, and no insurance agent shall accept from a company, any valuable consideration or inducement of any ~~kind~~ kind, directly or indirectly, other than an article of merchandise not exceeding one dollar ($1.00) in value which shall have thereon the advertisement of the insurance premium finance ~~company; but an~~ company. An insurance premium finance company may purchase or otherwise acquire an insurance premium finance agreement ~~provided that it conforms to this Article in all respects,~~ from another insurance premium finance company with recourse against the insurance premium finance company on such terms and conditions as may be mutually agreed upon by the parties, if the agreement complies with the requirements of this Article. ~~and such terms~~ The terms and conditions of the agreement shall be subject to the approval of the Commissioner.

(b) No filing of the assignment or notice thereof to the insured shall be necessary to the validity of the written assignment of an insurance premium finance agreement as against creditors or subsequent purchases, pledges, or encumbrancers of the assignor.

(c) As used in this section, the term 'insurance premium finance company' includes employees of the company and the term 'insurance agent' includes employees of the insurance agent. The word 'company' means an insurance premium finance company."

Section 8. This act becomes effective October 1, 1997, and applies to premium finance agreements or contracts entered into on or after that date.

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Legislative Services Office

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April 24, 1997

MEMORANDUM

TO: Senator R.C. Soles, Jr., Chairman
Commerce Committee

FROM: Linwood Jones

RE: Senate Bill 577 - Proposed Committee Susbtitute
(Insurance Premium Financing)

Senate Bill 577 makes several changes to the laws regulating insurance premium financing companies and insurance premium financing agreements.

Section 1 allows premium financing companies to use microfilm , microfiche, and imaging systems, in addition to photographic reproductions, to store records that are required to be kept on file for inspection by the Commissioner. Current law allows only the originals and photographic reproductions.

Section 2 eliminates the requirement that the text of the premium financing agreement be in 8-point type and instead allows the Commissioner of Insurance to set the type size by rule. This section also makes several technical and grammatical changes to the law that sets out the required contents of a premium financing agreement and allows the agreement to list any mailing address specified by the insured (in lieu of the insured's residence or place of business).

Section 3 provides that when the insured finances more than one insurance contract under a premium financing agreement, the service charge is computed from the earlier of the date the premium was advanced and the inception date of the insurance contract.

Section 4 provides that the premium financing company or agent can have the agreement delivered to the insured before the due date of the first installment payment. Current law requires the company or agent to deliver it.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 5 provides that when the amount of a refund credit for anticipation of payment is less than $5.00, no refund is required to be made. Under current law, this threshold is $1.00. The unrefunded money goes to the escheat fund at the State Treasurer's ofice.

Section 6 allows the premium financing company to notify the insured of cancellation of its insurance contract (assuming the premium financing company has been authorized to cancel) by mail, personal delivery, e-mail, and fax. Currently, the delivery must be by mail. The premium financing company, in its request to the insurer to cancel the insurance contract, must specify the effective date of cancellation. The insurer must cancel it effective that date. A copy of this request must also be sent to the agent. An insurance policy is considered invalid and void if the agent or premium financing company informs the insurer that the initial down payment for the premium has been dishonored.

Section 6 also requires that the return of unearned premiums from the insurer to the premium financing company when the insurance policy is canceled must be refunded within 30 days of the effective date of the cancellation. If the premium is subject to an audit to determine the final premium amount, the gross unearned premium will be calculated on the deposit premium. The insurer cannot offset the return premiums against other debts that the insured owes the insurer on other policies. If the return premiums credited to the insured exceed what the insured owes by $5.00 or more, the premium finance company must refund the excess to the insured as soon as possible and in any event within 30 days. An unpaid balance owed by the insured after cancellation of his or her policy earns interest at the rate specified in the agreement.

Section 7 rewrites the anti-rebate law for insurance premium financing. The current law prohibits premium financing companies and their employees from offering a rebate or any other kind of inducement to an agent, an agent's employee, or any other person as an inducement to the financing of the premium with that company. The bill restates this prohibition in a different manner.

Section 8 makes this act effective October 1, 1997, and applicable to premium finance agreements entered into on or after that date.

SUMMARY OF SB 577

INSURANCE PREMIUM FINANCE UPDATE

Section 1. **Records**--allow for preservation of records also in electronic form. (G.S.58-35-30)

Section 2. **Agreement Requirements** -- Delete the restriction to 8 point type and allow for easily readable type and provide for mailing address of agent or broker. (G.S.58-35-50)

Section 3. **Service Charge** -- adds commencement date of charges provision. (G.S. 58-35-55)

Section 4. **Agreement Delivery** -- provides alternative means of delivery. (G.S. 58-35-65)

Section 5. **Refund Credit** -- no refund increased from one dollar to five dollars. Similar to other insurance law. Escheat provision. (G.S.58-35-80)

Section 6. **Notice Delivery and Refund** (G.S. 58-35-85)

1. Allow for additional means of delivery of cancellation notice.
2. Cancellation notice to specify the effective date of cancellation and copy provided to agent
3. Worthless check as payment results in contract cancellation ab initio.5. no changes.
4. No set off from return premium for other indebtedness owed.
5. Return premium refund within 30 days of greater than $5.00.
6. Unpaid account bears interest until paid.

Section 7. **Anti-Rebate** -- agents and employees may not accept inducements and rebates from premium financing companies. (G.S. 58-30-40)

Section 8. **Effective date** -- October 1, 1997.

Sen. Eric Reeves

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(April 23, 1997)

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April 14, 1997

Sen. R. C. Soles
North Carolina General Assembly
2022 Legislative Building
Raleigh, NC 27601-2808

Re: SB 577 - Insurance Premium Financing

Dear R. C.:

As you know this bill is in the Senate Commerce committee and was sponsored by Sen. Eric Reeves.

This legislation updates our statutes on this industry which is regulated by the Department of Insurance.

The committee substitute is designed to bring our law up to date.

See attached explanation.

We have worked with Sen. Reeves and the Department of Insurance and insurance groups in preparing the legislation and if you hear of any concern from any other party please let me know.

Sincerely,

Sam Johnson, Atty for
NC Assn. of Premium Service Cos.

Enclosures
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q:\docs\shj\legslatve\leg-ltrs\s commerce ltr

RC there will be a committee substitute Sam

SUMMARY OF PROPOSED LEGISLATION

INSURANCE PREMIUM FINANCE UPDATE

Section 1. **Records**--allow for preservation of records also in electronic form. (G.S.58-35-30)

Section 2. **Agreement Requirements** -- Delete the restriction to 8 point type and allow for easily readable type and provide for mailing address of agent or broker. (G.S.58-35-50)

Section 3. **Service Charge** -- adds commencement date of charges provision. (G.S. 58-35-55)

Section 4. **Agreement Delivery** -- provides alternative means of delivery. (G.S. 58-35-65)

Section 5. **Refund Credit** -- no refund increased from one dollar to five dollars. (G.S.58-35-80)

Section 6. **Notice Delivery and Refund** (G.S. 58-35-85)

1. Allow for additional means of delivery of cancellation notice.
2. Cancellation notice to specify the effective date of cancellation and copy provided to agent
3. Contract canceled as of date specified in cancellation notice.
4. Worthless check as payment results in contract cancellation ab initio.
5. no changes.
6. Refund pro rata and paid within 30 days from date of cancellation.
7. no changes.
8. No set off from return premium for other indebtedness owed.
9. Return premium refund within 30 days of greater than $5.00. (or less if Sen Kerr desires)
10. Unpaid account bears interest until paid.

Section 7. **Anti-Rebate** -- agents and employees may not accept inducements and rebates from premium financing companies. (G.S. 58-30-40)

Section 8. **Effective date** -- October 1, 1997.

Sam Johnson, Atty.
919/743-2200 - phone
919/743-2201 - fax

g:\wp61\premfin\summary2.lgs
(April 2, 1997)

INSURANCE PREMIUM FINANCING

WHAT IS A PREMIUM FINANCE COMPANY?

It is a company that is licensed and regulated and which provides financing for customers of insurance agents in North Carolina, principally in the area of automobile liability and collision, and fire and casualty insurance policies.

IS PREMIUM FINANCING IMPORTANT?

This system is very important to the consumer who does not have the money to pay for the policy or who does not have credit standing to borrow from a bank. Because this financing is available, there are fewer motorists driving uninşured on the highways.

This system is also important to some of the small businessmen who finance casualty or other premiums with a premium finance company and keep their regular lines of credit open at banks for other purposes.

HOW DOES IT WORK?

A customer purchases a liability or casualty insurance policy from his agent. The customer then has the choice of paying the premium from (a) funds on hand; (b) on open account with the agent; (c) borrowing the money; or (d) using the premium finance method.

A premium financing contract can include one or more than one insurance policy premiums. A customer may finance the liability and collision insurance coverages plus the fire and casualty coverage on his house in a single premium finance contract. About 6% of the automobile liability and other fire and casualty policies purchased in this state are financed through the premium finance method. In 1995, there were 917,966 contracts financed through this system in North Carolina. The premium finance industry is a very specialized industry that offers an alternative to other means of financing insurance contracts.

The agent requires a down payment of approximate 20% to 35% of the premium, and the customer can finance the balance for approximately six to eight months. Upon receipt of the papers from the agent, the company will mail the agent the balance of the premium, and the agent can immediately pay the company. The policyholder then pays the monthly premium to the premium finance company.
The first premium is due in 30 days, and monthly thereafter. If a payment is not made, it takes about 25 days to go through the notice process for a delinquent payment, and where a policy is canceled for a delinquent payment, and where a policy is canceled for non-payment, it takes about 60 days to process the paperwork and to receive a returned premium from the agent.

The cancellation rate is about 22% and the bad debt loss runs about 18%.

CONCLUSION

For further information, please contact the undersigned.

Sam Johnson, Atty. for
N.C. Association of Premium Service Cos.
919/743-2200

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 973
Proposed Committee Substitute
S973-CSRN-001

Short Title: Health Plan Information (Public)

Sponsors:

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HEALTH BENEFIT PLANS TO PROVIDE CERTAIN INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§58-3-190. Managed care reporting and disclosure requirements:**

(a) Each health benefit plan shall annually, on or before the first day of March of each year, file in the office of the Commissioner the following information, to the extent applicable:

(1) The number of and reasons for complaints by plan participants regarding medical treatment received by the plan;

(2) The number of participants who terminated coverage under the plan for any reason;

(3) The number of provider contracts that were terminated in the preceding year and the reasons for termination. This information shall include the number of providers leaving the plan and the number of new providers;

(4) Utilization data that includes statistics relating to the utilization, quality, availability, and accessibility of services, as defined by the Commissioner; and

(5) Aggregate financial compensation data, including the percentage of providers paid under a capitation arrangement, discounted fee-for-service or salary, the services included in the capitation payment, and the range of compensation paid by withhold or incentive payments. This information shall be submitted on a form prescribed by the Commissioner.

(b) Disclosure requirements.-- Each health benefit plan shall provide the following applicable information to plan participants and prospective participants upon request:

(1) The evidence of coverage (G.S. 58-67-50), subscriber contract (58-65-60, 58-65-140), health insurance policy (58-51-80, 58-50-125, 58-50-55), or the contract and benefit summary of any other type of health benefit plan.

(2) The plan's utilization review criteria or treatment protocol used to determine the medical necessity of a specific procedure or treatment;

(3) The plan's restrictive formularies or prior approval requirements for obtaining prescription drugs, whether a particular drug or therapeutic class of drugs is excluded from its formulary, and the circumstances under which a non-formulary drug may be covered; and

(4) The plan's procedures for determining whether a specified procedure, test, or treatment is experimental.

(c) For purposes of this section, "health benefit plan" or "plan" means accident and health insurance policies or certificates; hospital, medical or dental service corporation contracts; health maintenance organization (HMO) subscriber contracts; and plans provided by a MEWA or plans provided by other benefit arrangements, including contracts between hospitals and physician groups and employers for the delivery of health care services to employees of the employer, to the extent permitted by ERISA."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE April 30, 1997

S. B. No. 973 Amendment No. _____

(to be filled in by Principal Clerk)

Rep.)
) Hoyle
Sen.)

moves to amend the bill on page 8 / 9 pc, line 20

by deleting ~~the bill~~ it

number of new providers. The paragraph does not require the disclosure of any identifying information about a provider, and no civil liability shall arise from compliance with the paragraph.)

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 973
Proposed Committee Substitute S973-PCS6674

Short Title: Health Plan Information. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HEALTH BENEFIT PLANS TO PROVIDE CERTAIN INFORMATION.

The General Assembly of North Carolina enacts:

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(1) The number of and reasons for complaints by plan participants regarding medical treatment received by the plan;

(2) The number of participants who terminated coverage under the plan for any reason;

(3) The number of provider contracts that were terminated in the preceding year and the reasons for termination. This information shall include the number of providers leaving the plan and the number of new providers. This paragraph does not require the disclosure of any identifying information about a provider, and no civil liability shall arise from compliance with this paragraph;

(4) Utilization data that includes statistics relating to the utilization, quality, availability, and accessibility of services, as defined by the Commissioner; and

(5) Aggregate financial compensation data, including the percentage of providers paid under a capitation arrangement, discounted fee-for-service or salary, the services included in the capitation payment, and the range of compensation paid by withhold or incentive payments. This information shall be submitted on a form prescribed by the Commissioner.

(b) Disclosure requirements. -- Each health benefit plan shall provide the following applicable information to plan participants and prospective participants upon request:

(1) The evidence of coverage (G.S. 58-67-50), subscriber contract (G.S. 58-65-60, 58-65-140), health insurance policy (G.S. 58-51-80, 58-50-125, 58-50-55), or the contract and benefit summary of any other type of health benefit plan.

(2) The plan's utilization review criteria or treatment protocol used to determine the medical necessity of a specific procedure or treatment;

(3) The plan's restrictive formularies or prior approval requirements for obtaining prescription drugs, whether a particular drug or therapeutic class of drugs is excluded from its formulary, and the circumstances under which a nonformulary drug may be covered; and

(4) The plan's procedures and medically based criteria for determining whether a specified procedure, test, or treatment is experimental.

(c) For purposes of this section, 'health benefit plan' or 'plan' means accident and health insurance policies or certificates; hospital, medical, or dental service corporation contracts; health maintenance organization (HMO) subscriber contracts; and plans provided by a MEWA or plans provided by other benefit arrangements, including contracts between hospitals and physician groups and employers for the delivery of health care services to employees of the employer, to the extent permitted by ERISA."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 740

Short Title: Garnishment to Satisfy Judgments. (Public)

Sponsors: Senators Rand; Allran, Blust, Carrington, Clark, Dalton, East, Forrester, Foxx, Garwood, Hartsell, Horton, Hoyle, Jenkins, Kincaid, Ledbetter, McDaniel, Perdue, Plyler, Reeves, Rucho, Shaw of Cumberland, Shaw of Guilford, Warren, Webster, and Weinstein.

Referred to: Commerce.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE GARNISHMENT OF WAGES AS AN ADDITIONAL MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS AND TO AUTHORIZE COLLECTION AGENCIES TO TAKE AN ASSIGNMENT OF CLAIMS AS REAL PARTIES IN INTEREST FOR THE PURPOSE OF BILLING, COLLECTION, AND BRINGING SUITS.

Whereas, four states allow garnishment of commercial debts; and

Whereas, personal bankruptcy has increased 35% in North Carolina since 1995; and

Whereas, the United States federal government allows wage garnishment of civil service employees; and

Whereas, garnishment of wages is allowed in North Carolina regarding judgments ordering the payment of hospital bills, ambulance charges, and child support; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-362 reads as rewritten:

"**§ 1-362. Debtor's property ordered sold.**

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and personal property exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the ~~judgment; except~~

~~that the~~ judgment. The earnings of the debtor for ~~his~~ the debtor's personal ~~services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor~~ services shall not be subject to attachment or garnishment in excess of 30 times the federal minimum hourly wage or seventy-five percent (75%) of the debtor's net income, whichever is greater."

Section 2. Part 3 of Article 35 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-440.18A. Levy on wages in possession of defendant garnishee.**

(a) Levy on Wages. -- The sheriff shall levy on the debtor's wages in the possession of the defendant garnishee to the extent allowed under G.S. 1-362. The levy shall continue until the debt is satisfied. The defendant garnishee shall withhold the attachable wages payable to the debtor and shall remit the amount withheld directly to the creditor within 15 days of the last wage pay period of each month. The defendant garnishee shall be entitled to deduct from each employee any extra costs incurred to record these transactions, not to exceed two percent (2%) of the amount of money collected under this section.

(b) Order of Wage Attachments. -- Attachments shall be satisfied in the following order, beginning with highest priority:

(1) Attachment for child support.

(2) Attachment by a governmental entity.

(3) Attachment by other entities.

If an employer is served with more than one attachment of the same order of priority against the same judgment debtor, then the attachments shall be satisfied in the order in which they were served. Each prior attachment shall be satisfied before any effect is given to a subsequent attachment.

(c) Lapse of Attachment. -- If a judgment debtor resigns or is dismissed from employment while an attachment on the debtor's wages is wholly or partially unsatisfied, the attachment shall lapse unless the judgment debtor is reinstated or reemployed within 90 days from the date of dismissal.

(d) Prohibition. -- No employer shall discharge an employee because the employee's wages are being garnished. An employer who violates this subsection may be adjudged in contempt of court and subject to a fine of up to five hundred dollars ($500.00). An employee who is aggrieved by a violation of this subsection may bring an action for damages and reasonable attorneys' fees.

(e) Statement of Payments. -- Within 15 days after the defendant garnishee has remitted payment to the judgment creditor, the judgment creditor shall furnish the defendant garnishee, the judgment debtor, and the clerk of court a written statement showing all payments that were credited to the account of the judgment debtor during that month.

(f) Notice of Satisfaction. -- The judgment creditor shall, within seven business days after satisfaction of the total amount due under the judgment, including interest and costs of the judgment, notify the defendant garnishee in writing that the order of

wage attachments is satisfied. The judgment creditor shall, within 30 days after satisfaction of the total amount due under the judgment, including interest and costs of the judgment, notify the clerk of court in writing that the order of wage attachments is satisfied.

(g) Application of Payments Received. -- All payments received by a judgment creditor shall be credited in the following order, beginning with the first:

(1) Against the record costs of the judgment and attachment orders.

(2) Against the accrued interest on the unpaid balance of the judgment, if any.

(3) Against the principal amount of the judgment.

(4) Against any attorneys' fees and costs actually assessed.

(h) Failure to Comply. -- If the judgment creditor fails to comply with this section, the court may, upon request, set aside the attachment and order the judgment creditor to pay reasonable attorneys' fees and court costs of the party seeking to set aside the attachment.

(i) Public Wages. -- Wages paid by a city, county, State, or local government authority are subject to this section in the same manner as the wages of a private person."

Section 3. Article 70 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-7-121. Assignments.**

Nothing in this Article prevents a collection agency from taking an assignment of a claim in its own name as a real party in interest for the purpose of billing, collection, and filing a civil action. No civil action under this section may be instituted on behalf of a collection agency in any court unless an attorney makes an appearance for the collection agency."

Section 4. This act becomes effective October 1, 1997, and applies to civil actions filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE April 30, 1997

S. B. No. 740 PCS 002 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) RAND

moves to amend the bill on page 1, lines 3 THROUGH 5

( ) WHICH CHANGES THE TITLE

by REWRITING THE LINES TO READ:

"MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS."

AND, ON PAGE 2, LINE 20

BY DELETING THE WORD

"OWNED" AND SUBSTITUTING THE WORD "OWED".

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

North Carolina General Assembly
Legislative Services Office

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April 30, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL 740 - GARNISHMENT TO SATISFY JUDGMENTS** - Senator Rand.

The Proposed Committee Substitute for Senate Bill 740 would expand the law of garnishment to permit a judgment creditor to garnish a portion of the judgment debtors wages to be applied towards the satisfaction of the judgment owed.

The current law only permits regular garnishment of wages in a few limited circumstances including for child support payments and taxes, and permits garnishment for other judgments only on earnings more than 60 days due if the earnings are necessary for the use of a family supported wholly or partly by the debtor's labor which makes garnishment impractical and unproductive in most situtations.

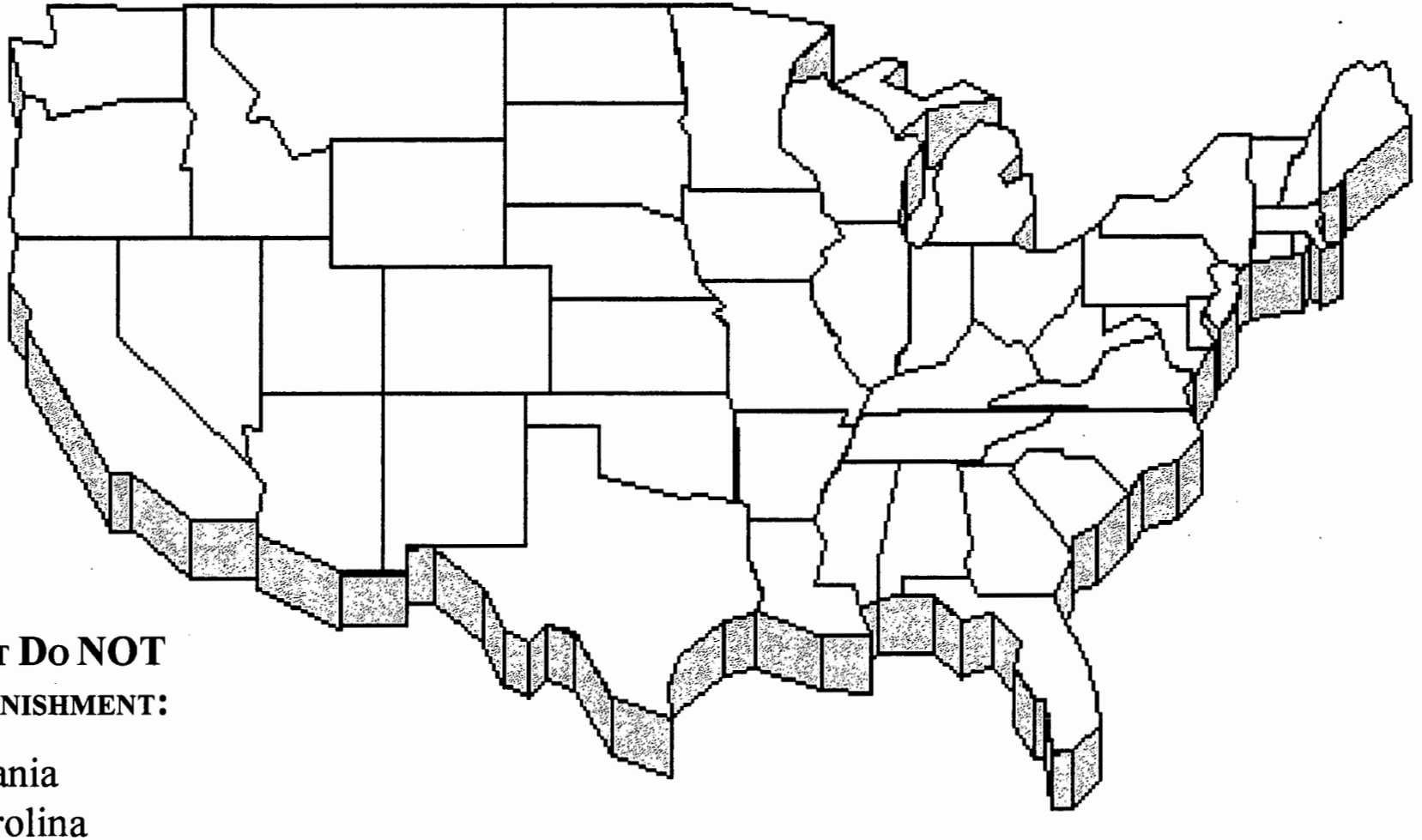
This bill would authorize garnishment of wages in excess of 30 times the federal minimum hourly wage per work week or 75% of the debtor's net income, whichever is greater. Section 2 creates a new Article in Chapter 1C which sets out the procedures for garnishment. Under these provisions, once a judgment is obtained for money damages, a judgment creditor may ask the clerk to issue an order of garnishment to the debtor's employer, directing the employer to withhold from the debtor's wages the non-exempt portion of the debtor's pay. This withheld amount is to be sent directly to the creditor to be applied towards the judgment. The employer is entitled to a fee for processing the garnishment of 2% of the amount withheld or $5.00, whichever is greater. The debtor has a right to object to the garnishment and may have a hearing before the clerk to determine the validity of the garnishment.

Section 2 also establishes the priorities for multiple garnishment claims and sets out the priority for applying payments received. Once the judgment is satisfied, the judgment creditor must notify the employer and the clerk. This procedure applies to wages paid to governmental employees as well as private employees.

Section 3 prohibits retaliation by an employer against an employee whose wages are being garnished.

The bill becomes effective October 1, 1997 and applies to civil action filed on or after that date.

States That Permit Garnishment of Wages For Authorized Judgment



States That Do NOT Permit Garnishment:

- Pennsylvania
- North Carolina
- South Carolina
- Texas

States That Do NOT Permit

States That Do Permit

None of the forty-six states that have passed garnishment legislation have ever repealed it.

OVERVIEW OF SB 740

Garnishment To Satisfy Judgments

I. When a person or business is owed a debt that remains delinquent, he may file suit and obtain a "judgment." This judgment is often viewed as a useless piece of paper, this legislation endeavors to provide a remedy to the person who holds this "useless" piece of paper.

II. Protects "Living" Wages

Consistent with federal laws, this bill places a "floor" on the amount of wages that may be garnished to satisfy judgments. Earnings equal to or below 30 times the federal minimum hourly wage per work week or 75% of the debtor's net income, whichever is greater, **cannot** be garnished to satisfy judgments. Example: For an employee who "takes home" $200 per week, $154.50 is exempt from any and all forms of garnishment, or $45.50 is the maximum amount that can be garnished.

III. Process

The bill provides for a new way to collect court authorized judgments while at the same time not overburdening the court system.

To achieve this goal, the bill requires the employer to make payment directly to the creditor. The judgment holder is required to notify the clerk of court and the employer when the judgment is satisfied.

IV. Protects Child Support Garnishment

SB 740 states that the garnishment for child support and taxes shall always have priority over a garnishment for judgment.

V. Protects Employee from Being Fired Because His Wages are Being Garnished

The bill specifically states that an employee cannot be fired because of garnishment of his/her wages.

VI. Provides for More Efficient Collection of Debts

Bill allows small businesses, who often do not have the manpower to collect their own accounts, to assign their accounts to a collection agency for suit.

Supporters of Garnishment Legislation
SB 740

Apartment Association of North Carolina
Association of Credit Bureaus of North Carolina
Automobile Dealers Association
Automotive Parts Association
Carolinas Tennessee Building Materials Association
Household Financial Group
Marion Credit Company of North Carolina
May Department Store
National Association of Credit Management
North Carolina Association of Realtors
North Carolina Collectors Association
North Carolina Financial Service Association
North Carolina Retail Merchants Association
North Carolina Service Station Association
North Carolina Tire Dealers Association
Resident Lenders of North Carolina
Southern Home Furniture Association
Winston-Salem Merchant Association

At Governor Hunt's First Conference on Small Business, held April 6th and 7th, 200 small business owners worked to hammer-out a legislative agenda. They list "allowance of wage garnishment for debt" as one of their top legislative priorities.

The Virginia Chamber of Commerce
9 South Fifth Street / Richmond, Virginia 23219-3890 / (804) 644-1607 / (804) 783-5112 (FAX)

April 23, 1997

The Honorable Tony Rand
North Carolina Senate
Legislative Office Building
Room 300-C
Raleigh, NC 27601-2808

Dear Senator Rand:

It is our understanding that the Senate is considering a bill which you have introduced which would enact a garnishment law in North Carolina.

Virginia has had a garnishment law for decades. It is a relatively simple procedure which has not generated undue hardship for Virginia employers who are quite accustomed to it. Indeed, some employers use the procedure to collect debts.

In the seven years that I have been with the Virginia Chamber, no employer has raised a complaint. I have consulted with my colleagues with the Virginia Manufacturers Association, the Virginia Retail Merchants Association, the Virginia Auto Dealers Association, and the Virginia Hospitality and Travel Association. None have received complaints. It simply is not an issue for employers in Virginia.

I hope this information is helpful as the legislature considers a similar law in North Carolina.

With kind regards, I am

Very truly yours,

Sandra D. Bowen
Senior Vice President

Senator Anthony Eden Rand
Legislative Office Building
Room 300-C
Raleigh, North Carolina 27601

April 28, 1997

Dear Senator Rand,

Earlier this month, on April 6th and 7th, over 200 small business owners from all regions of our State gathered for the North Carolina Governor's Conference on Small Business. The purpose of this meeting was to address the priorities for changes needed to improve the climate for business success in North Carolina. I thought that you should know that one of the top priorities recommended by the delegates to the conference was the need for a wage garnishment law to allow North Carolina business owners to collect debts owed to them by customers.

As a small business owner I know well the difficulties encountered when a customer fails to pay for goods purchased on credit. To the business owner, it's as if a thief came into your store and stole your merchandise! I urge that you and your colleagues support legislation that will allow small business owners to seek wage garnishment for debts rightfully owed to them.

Please feel free to call me if I can answer any questions regarding this matter.

Warren W. Gulko
Governor's Conference Co-Chair

cc: Mr. Michael Johnson, NCDSB State Chair
Regulation and Paperwork

VISITOR REGISTRATION SHEET

COMMERCE — 4-30-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Henry Patterson	Patterson, Harkavy & Lawrence
[illegible]	NC AFL-CIO
H. Webb	Johnson et al
Sam Johnson	Atty
Sam Cover	BPM HL
Paul Eggleman	Inform Inc.
Brenda Daugherty	Sprint
Polly Williams	NC Equity / AARP
James ANDREWS	NC State AFL-CIO
Sondra Allen	NCBA
PAUL SOCK	NC Bankers Assn.
[illegible]	DOC
[illegible] Harris	DOC
Alice Garland	Electric Cities
Marie Barnes	NCCBI
Phil Lehman	NC AGO
Alan Miles	Bailey & Dixon, LLP
[illegible]	Interim Corp
[illegible]	HHS
Kim Smith	NCLM
Alan Hirsch	Atty Gen's Office
Terry Dasmond	GTE

VISITOR REGISTRATION SHEET

Commerce Committee — 4-30-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Evelyn Hawthorne	NCHA
Mary Lewis	NCSA
David Ferrell	Hofler, McNamara, Caldwell, McElroy & Hutler
Bernard Allen	Secy of State

Box 7

1. 1997 Senate Commerce (begin May 1, 1997)
2. 1998 Senate Commerce
3. 1997 Senate Education/Higher Ed
4. 1998 Senate Education/Higher Ed
5. 1997 Senate Finance (cont'd. to Box 8)

MINUTES
SENATE COMMERCE COMMITTEE
May 1, 1997

A meeting of the Senate Commerce Committee was held on May 1, 1997 at 8 o'clock a.m. in Room 1027 of the Legislative Building. Fifteen members were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheets.

Sen. R. C. Soles, Jr., Chairman, called the meeting to order.

The following bills were considered by the committee:

SB 740 - AN ACT TO AUTHORIZE THE GARNISHMENT OF WAGES AS AN ADDITIONAL MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS AND TO AUTHORIZE COLLECTION AGENCIES TO TAKE AN ASSIGNMENT OF CLAIMS AS REAL PARTIES IN INTEREST FOR THE PURPOSE OF BILLING, COLLECTION, AND BRINGING SUITS.

A proposed committee substitute was sent forth and Sen. Rand moved that it be adopted, motion carried. Walter Reagan, Committee Counsel, explained the changes made in the proposed committee substitute to the committee. There was much discussion and questions by the committee.

Mr. Ralph Knot, Clerk of Court, Franklin County, told the committee that the Clerks of Court still had some concerns about this bill. Mr. Chris Scott, AFL-CIO, said they did oppose the concept of garnishment. Mr. Robert Scholfield, NC Justice & Community Development Center spoke in opposition to the bill.

Sen. Rand made a motion to give the bill a favorable report and send it to the Rules Committee and incorporate into a study bill. The motion carried.

SB 821 - AN ACT TO DIRECT THE HOUSING FINANCE AGENCY TO EXAMINE THE USE OF FUNDS FROM THE HOUSING TRUST FUND IN DOWNTOWN AREAS.

Sen. L. Shaw, sponsor, explained this bill to the committee. Sen. Kerr moved to give the bill a favorable report. Motion carried.

SB 860-AN ACT TO REDEFINE PRISON ENTERPRISES.
Sen. Lee sent forth a proposed committee substitute and moved that it be adopted, motion carried.

Sen. Kincaid moved to give the proposed committee substitute a favorable report. The motion carried.

SB 1013-AN ACT TO ENCOURAGE NORTH CAROLINA'S ELECTRIC UTILITIES TO IMPLEMENT RENEWABLE ENERGIES AND ENERGY EFFICIENCY.

A proposed committee substitute was sent forth and Sen. Kerr moved that it be adopted, motion carried. Sen. Gulley then explained the proposed committee substitute to the committee. Sen. Hoyle made a motion to refer it to the Rules Committee and to incorporate it into the study bill. The motion carried.

SB 574-AN ACT REQUIRING CERTAIN EMPLOYERS TO PROVIDE MEAL AND REST PERIODS DURING WORKING HOURS UNDER CERTAIN CIRCUMSTANCES.

Sen. Gulley, sponsor, explained this bill to the committee.

Mr. Dave Cope, Department of Labor, told the committee that they received approximately 4,000 calls regarding this issue each year.

The meeting adjourned 9 o'clock a.m.

Sen. R. C. Soles, Jr., Chairman

Janet Blalock, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
SEN. R. C. SOLES, JR., Chairman

Thursday, May 01, 1997

SEN. R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **860** Redefine Prison Enterprises

Draft Number:	PCS7792
Sequential Referral:	none
Recommended Referral:	Rules
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 740

Short Title: Garnishment to Satisfy Judgments. (Public)

Sponsors: Senators Rand; Allran, Blust, Carrington, Clark, Dalton, East, Forrester, Foxx, Garwood, Hartsell, Horton, Hoyle, Jenkins, Kincaid, Ledbetter, McDaniel, Perdue, Plyler, Reeves, Rucho, Shaw of Cumberland, Shaw of Guilford, Warren, Webster, and Weinstein.

Referred to: Commerce.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE GARNISHMENT OF WAGES AS AN ADDITIONAL MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS AND TO AUTHORIZE COLLECTION AGENCIES TO TAKE AN ASSIGNMENT OF CLAIMS AS REAL PARTIES IN INTEREST FOR THE PURPOSE OF BILLING, COLLECTION, AND BRINGING SUITS.

Whereas, four states allow garnishment of commercial debts; and

Whereas, personal bankruptcy has increased 35% in North Carolina since 1995; and

Whereas, the United States federal government allows wage garnishment of civil service employees; and

Whereas, garnishment of wages is allowed in North Carolina regarding judgments ordering the payment of hospital bills, ambulance charges, and child support; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-362 reads as rewritten:

"**§ 1-362. Debtor's property ordered sold.**

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and personal property exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the ~~judgment; except~~

~~that the~~ judgment. The earnings of the debtor for ~~his~~ the debtor's personal ~~services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor~~ services shall not be subject to attachment or garnishment in excess of 30 times the federal minimum hourly wage or seventy-five percent (75%) of the debtor's net income, whichever is greater."

Section 2. Part 3 of Article 35 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-440.18A. Levy on wages in possession of defendant garnishee.**

(a) Levy on Wages. -- The sheriff shall levy on the debtor's wages in the possession of the defendant garnishee to the extent allowed under G.S. 1-362. The levy shall continue until the debt is satisfied. The defendant garnishee shall withhold the attachable wages payable to the debtor and shall remit the amount withheld directly to the creditor within 15 days of the last wage pay period of each month. The defendant garnishee shall be entitled to deduct from each employee any extra costs incurred to record these transactions, not to exceed two percent (2%) of the amount of money collected under this section.

(b) Order of Wage Attachments. -- Attachments shall be satisfied in the following order, beginning with highest priority:

(1) Attachment for child support.

(2) Attachment by a governmental entity.

(3) Attachment by other entities.

If an employer is served with more than one attachment of the same order of priority against the same judgment debtor, then the attachments shall be satisfied in the order in which they were served. Each prior attachment shall be satisfied before any effect is given to a subsequent attachment.

(c) Lapse of Attachment. -- If a judgment debtor resigns or is dismissed from employment while an attachment on the debtor's wages is wholly or partially unsatisfied, the attachment shall lapse unless the judgment debtor is reinstated or reemployed within 90 days from the date of dismissal.

(d) Prohibition. -- No employer shall discharge an employee because the employee's wages are being garnished. An employer who violates this subsection may be adjudged in contempt of court and subject to a fine of up to five hundred dollars ($500.00). An employee who is aggrieved by a violation of this subsection may bring an action for damages and reasonable attorneys' fees.

(e) Statement of Payments. -- Within 15 days after the defendant garnishee has remitted payment to the judgment creditor, the judgment creditor shall furnish the defendant garnishee, the judgment debtor, and the clerk of court a written statement showing all payments that were credited to the account of the judgment debtor during that month.

(f) Notice of Satisfaction. -- The judgment creditor shall, within seven business days after satisfaction of the total amount due under the judgment, including interest and costs of the judgment, notify the defendant garnishee in writing that the order of

wage attachments is satisfied. The judgment creditor shall, within 30 days after satisfaction of the total amount due under the judgment, including interest and costs of the judgment, notify the clerk of court in writing that the order of wage attachments is satisfied.

(g) Application of Payments Received. -- All payments received by a judgment creditor shall be credited in the following order, beginning with the first:

(1) Against the record costs of the judgment and attachment orders.

(2) Against the accrued interest on the unpaid balance of the judgment, if any.

(3) Against the principal amount of the judgment.

(4) Against any attorneys' fees and costs actually assessed.

(h) Failure to Comply. -- If the judgment creditor fails to comply with this section, the court may, upon request, set aside the attachment and order the judgment creditor to pay reasonable attorneys' fees and court costs of the party seeking to set aside the attachment.

(i) Public Wages. -- Wages paid by a city, county, State, or local government authority are subject to this section in the same manner as the wages of a private person."

Section 3. Article 70 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-7-121. Assignments.**

Nothing in this Article prevents a collection agency from taking an assignment of a claim in its own name as a real party in interest for the purpose of billing, collection, and filing a civil action. No civil action under this section may be instituted on behalf of a collection agency in any court unless an attorney makes an appearance for the collection agency."

Section 4. This act becomes effective October 1, 1997, and applies to civil actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 821*

Short Title: Housing Trust Fund/Downtowns. (Public)

Sponsors: Senators Shaw of Cumberland; Blust, Carpenter, Jordan, Kincaid, Ledbetter, Lucas, Martin of Guilford, Shaw of Guilford, and Weinstein.

Referred to: Commerce.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE HOUSING FINANCE AGENCY TO EXAMINE THE USE OF FUNDS FROM THE HOUSING TRUST FUND IN DOWNTOWN AREAS.

The General Assembly of North Carolina enacts:

Section 1. The Housing Finance Agency shall examine the use of funds from the Housing Trust Fund in downtown areas. The Housing Finance Agency shall report to the Joint Legislative Commission on Governmental Operations on or before July 1, 1998, on the allocation of funds to downtown areas including the number and location of projects financed from the Fund in downtowns.

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

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Legislative Services Office

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April 30, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 821 - Housing Trust Fund/Downtown.**

Senate Bill 821 directs the Housing Finance Agency to examine the use of funds from the Housing Trust Fund in downtown areas. The bill requires the Fund to report to the Joint Legislative Commission on Governmental Operations on or before July 1, 1998 on the use of funds in downtown areas including the number and location of projects financed from the Fund in downtown areas.

This bill is a recommendation of the LRC Downtown Revitalization Study Committee, which noted that the Housing Trust Fund was created to assist people of low and moderate incomes to obtain decent, affordable and energy efficient housing. The Committee found that the Fund could play a role in stimulating housing growth in the State's downtown areas and that it merits close examination by the Housing Finance Agency.

This act would become effective July 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 860

Short Title: Redefine Prison Enterprises. (Public)

Sponsors: Senator Lee.

Referred to: Commerce.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO REDEFINE PRISON ENTERPRISES.

The General Assembly of North Carolina enacts:

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 860
Proposed Committee Substitute S860-PCS7791

Short Title: Study Prison Enterprises. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE JOINT LEGISLATIVE CORRECTIONS OVERSIGHT COMMITTEE TO STUDY THE CORRECTIONS ENTERPRISES SIGN SHOP.

The General Assembly of North Carolina enacts:

Section 1. The Joint Legislative Corrections Oversight Committee shall study the operation of the Corrections Enterprises sign shop, including, but not limited to, (i) the pricing structure in relation to private companies and (ii) job placement opportunities for prison apprentices upon release.

Section 2. The Committee may file an interim report with the 1997 Session (1998 Regular Session) of the General Assembly and shall file a final report with the 1999 Regular Session. The reports shall be filed no later than the dates on which those sessions respectively convene.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1013

Short Title: Encourage Renewable Energy. (Public)

Sponsors: Senator Gulley.

Referred to: Rules and Operations of the Senate.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE NORTH CAROLINA'S ELECTRIC UTILITIES TO IMPLEMENT RENEWABLE ENERGIES AND ENERGY EFFICIENCY.

The General Assembly of North Carolina enacts:

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

North Carolina General Assembly
Legislative Services Office

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(919) 733-7044

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May 1, 1997

MEMORANDUM

TO: Senate Committee on Commerce

FROM: Steven Rose, Committee Counsel for Public Utilities

RE: Proposed Committee Substitute for Senate Bill 1013; Encourage renewable energy

The proposed committee substitute for Senate Bill 1013 does the following:

Section 1 is a finding by the General Assembly in favor of voluntary, incentive-based programs by electric utilities that would promote renewable energy and energy efficiency during the time period prior to deregulation or restructuring of the electric utility industry.

Section 2 adds a new G.S. 62-303 that authorizes electric utilities to pursue new renewable energy and energy efficiency initiatives and receive credit against future requirements imposed by deregulation or restructuring. It also allows "rate-basing" of the utilities' annual expenses associated with such programs. The Utilities Commission is required to adopt rules for awarding the energy credits. The formula for calculating the energy credits is found in G.S. 62-303. In the event deregulation or restructuring does not occur by June 30, 2003 the value of the sustainable energy credits may be recovered by the electric utilities through "rate-basing" without approval of the Commission. Under present law, nothing may be added to the rate-base without prior approval of the Commission.

Sections 3 and 4 add definitions of "renewable energy" and "energy efficiency" to G.S. 62-3.

Section 5 of the bill provides that the North Carolina Solar Center at North Carolina State University shall provide clarification and interpretation on renewable energy technologies and the Energy Division of the Department of Commerce shall do the same on energy efficiency technologies. The section does not specify who the recipient of this clarification and interpretation will be.

The act becomes effective July 1, 1997.

S1013-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1013
Proposed Committee Substitute S1013-CSLL-001B
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Encourage Renewable Energy. (Public)

Sponsors:

Referred to: Rules and Operations of the Senate.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE NORTH CAROLINA'S ELECTRIC UTILITIES TO IMPLEMENT RENEWABLE ENERGIES AND ENERGY EFFICIENCY BY AUTHORIZING SUSTAINABLE ENERGY CREDITS FOR ELECTRIC UTILITIES THAT PURSUE NEW RENEWABLE ENERGY AND ENERGY EFFICIENCY INITIATIVES.

Section 1. The General Assembly finds that the State of North Carolina would benefit from a voluntary, incentive-based program under which the electric utilities servicing the State receive credit for conducting new renewable energy and energy efficiency initiatives during the time period prior to deregulation or restructuring of the electric utility industry in North Carolina.

Section 2. Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-303. Renewable energy and energy efficiency.**

(a) An electric utility may elect to pursue new renewable energy and energy efficiency initiatives and receive credit against future requirements that may be imposed by deregulation or restructuring, in addition to rate-basing its annual expenses associated with the implementation of renewable energy and energy efficiency programs in the conventional manner. The Commission

shall adopt rules for awarding sustainable energy credits, which shall apply only to newly created initiatives undertaken between July 1, 1997 and July 1, 2003 and shall be determined by multiplying the cost of the actual expenditure (which shall be rated-based) incurred by the electric utility in a particular year by the following sustainable energy credit factors:

Time Period			Sustainable Energy Credit Factors
July 1, 1997	-	June 30, 1999	1.0 x cost
July 1, 1999	-	June 30, 2001	.75 x cost
July 1, 2001	-	June 30, 2003	.50 x cost

Sustainable energy credits under this section shall not apply to renewable energy or energy efficiency initiatives that are paid for directly by customers.

(b) In the event that no deregulation or restructuring of the electric utility industry occurs by June 30, 2003, and electric utilities have incurred costs associated with new renewable energy or energy efficiency initiatives, those utilities may recoup the value of the sustainable energy credits through rate-basing these credits, as other costs, after June 30, 2003, without approval by the Commission."

Section 3. G.S. 62-3 is amended by adding a new subdivision to read:

"(24a) 'Renewable energy' means and includes technologies such as solar electric energy (photovoltaics, wind energy, thermal electric, low-head hydroelectric, ocean and tidal), solar thermal energy (concentrating collector systems, distillation, desalination, cooking or drying, solar ponds), biofuels (direct combustion, anaerobic digestion, ethanol), and solar buildings (solar water heating, active heating and cooling, passive heating and cooling, daylighting);"

Section 4. G.S. 62-3 is amended by redesignating subdivision (9a) of that section as subdivision (9b) and by adding a new subdivision to read:

"(9a) 'Energy efficiency' refers to a project or initiative that improves the energy efficiency of an existing building, product, application, or system by a minimum of twenty-five percent

(25%) over the current efficiency levels or improves the energy efficiency of a new building, product, application, or system by a minimum of twenty-five percent (25%) above current North Carolina State Building Code standards."

Section 5. The North Carolina Solar Center at North Carolina State University shall provide clarification and interpretation on technologies that qualify as "renewable energy" projects or initiatives as defined in G.S. 62-3(9a) and the Energy Division of the Department of Commerce shall provide clarification and interpretation on technologies that qualify as "energy efficiency" projects or initiatives as defined in G.S. 62-3(24a).

Section 6. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 574

Short Title: Require Work Breaks. (Public)

Sponsors: Senator Gulley.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT REQUIRING CERTAIN EMPLOYERS TO PROVIDE MEAL AND REST PERIODS DURING WORKING HOURS UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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April 30, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: Senate Bill 574 (Require Work Breaks)

Senate Bill 574 requires each employer to provide a meal period of at least 1/2 hour for employees that work at least 5 consecutive hours and a rest period of at least 10 minutes for employees that work at least 3 1/2 hours. Each 5 hours worked earns an employee a 10 minutes rest period. The rest period(s) must, to the extent practicable, be in the middle of the work period. Rest periods are considered time worked, and the employee must be compensated for that time.

These requirements do not apply to an employer who has only one employee at a particular place of business nor to an employees covered by a collective bargaining agreement. In addition, the Commissioner of Labor can exempt from these requirements (1)any employer that can prove "business necessity" prevents it from giving the required rest or meal period and (2) any association or group of employers that can prove with respect to all or certain categories of employees that business necessity prevents the required breaks. "Business necessity" means showing that the meal or rest period would substantially interfere with normal business operations.

This bill would take effect January 1, 1998.

VISITOR REGISTRATION SHEET

Commerce — 5/1/97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Ralph L Scott	CSC Franklin Co.
Jane F Gray	DOJ
Charles Cromer	NCATL
Will Lee	NCATL
Jim LORE	LORE & McCLEAREN
Sara	NC AFL-CIO
Henry Patterson	Patterson Hudson & Lawrence
Rob Schofield	NCUCDC
Bernard Allen	SOS
Jim Mills	NCJC
Dennis Nightingale	Public Staff
Alan Hirsch	Atty Gen's Office
Phil Lehman	" "
Alice Garland	Electricities
Brenda Dougherty	Sprint
Leslie Bevacqua	NCCBT
Bob Metcalf	NCNFA
Michael Thompson	North Carolina Power
Jack Heath	N.C. Collectors Assn.
Robert Hinton	NC Public Gas Ass'n
Bob Bennink	NCUC Staff

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Steve Keene	NCMA
Helen Lipina	Mecklenburg Co.
John McAlister	Duke Power
PW Kaylor	Kaylor Law Firm
Jerry Myers	Smith Debnam Hibbert LLP (Law firm)
Gail Rollins	NAV Dist. States
Fran Preston	NCKMA
D. Mabe	NCRMA
Elerdre Jurney	NC Delegation for Small Business
Jim Upchurch	CP&L

MINUTES
SENATE COMMERCE COMMITTEE
May 6, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building on Tuesday, May 6, 1997, at 11:00 a.m. Seventeen members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles, Chairman, called the meeting to order.

The following bills were considered by the Committee:

C. S. for HB 1033, AN ACT TO GIVE OUT-OF-STATE BANKS TWO MORE YEARS TO ESTABLISH AND MAINTAIN A DE NOVO BRANCH OR A BRANCH THROUGH ACQUISITION PURSUANT TO CERTAIN CONDITIONS.

Representative Church, the bill sponsor, explained the bill. He said it simply extends the sunset provision from June l, 1997, to June 1, 1999, in G. S. 53-224.14(c). Senator Hoyle moved that the C. S. for HB 1033 be given a favorable report. Motion carried.

C. S. for HB 790, AN ACT TO PROVIDE THAT A CHECK TAKER OR ACCEPTOR SHALL NOT WRITE OR PRINT THE RACE OR GENDER ON THE CHECK OR DRAFT OF A CHECK PASSER.

Representative Michaux, sponsor of the bill, said in Forsyth and Mecklenburg Counties magistrates are asking merchants to write the race and gender of the check passer on checks. This bill provides that the check taker would lose the benefit of making a prima facie case in worthless check cases if he/she writes the above information on the check. (See attached memorandum for additional information.)

Representative Michaux said the Merchant's Association supports the bill. Senator Lee moved that C.S. for HB 790 be given a favorable report. Motion carried.

C. S. for HB 899, AN ACT TO MODIFY THE REQUIREMENTS FOR DISCLOSURES UPON THE SALE OF RESIDENTIAL PROPERTIES.

Representative Howard, the sponsor, asked Senator Ledbetter to speak on the bill as she was Chairing a Committee in the House. The bill amends the Residential Property Disclosure Act by deleting the statutory disclosure form and directing the Real Estate Commission to adopt a standard disclosure form. Senator Ledbetter sent forward amendments to the Committee Substitute Bill. (See attachment).
Considerable discussion followed on the amendments and the bill itself, and Senator Warren suggested that a subcommittee be appointed to look at the bill more closely. Senator Kerr said he thought the statute should be repealed.

Senator Soles, Committee Chairman, appointed the following subcommittee to study the C. S. for HB 899:

Senator Warren, Chairman
Senator Dalton
Senator Ledbetter
Senator Lee
Senator R. Shaw.

The meeting adjourned at 11:45 a.m.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

CORRECTED REPORT

Tuesday, May 06, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**1033** Establishment of Bank Branches.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1033
Committee Substitute Favorable 4/29/97

Short Title: Establishment of Bank Branches. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO GIVE OUT-OF-STATE BANKS TWO MORE YEARS TO ESTABLISH AND MAINTAIN A DE NOVO BRANCH OR A BRANCH THROUGH ACQUISITION PURSUANT TO CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-224.14(c) reads as rewritten:

"(c) Prior to June 1, ~~1997,~~ 1999, an out-of-state bank may establish and maintain a de novo branch or may establish and maintain a branch through acquisition of a branch if:

(1) In the case of a de novo branch, the laws of the home state of the out-of-state bank permit North Carolina banks to establish and maintain de novo branches in that state under substantially the same terms and conditions as herein set forth; and

(2) In the case of a branch established through the acquisition of a branch, the laws of the home state of the out-of-state bank permit North Carolina banks to establish and maintain branches in that state through the acquisition of branches under substantially the same terms and conditions as herein set forth."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 790
Committee Substitute Favorable 4/22/97

Short Title: No Race or Gender on Checks. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CHECK TAKER OR ACCEPTOR SHALL NOT WRITE OR PRINT THE RACE OR GENDER ON THE CHECK OR DRAFT OF A CHECK PASSER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107.1(b) reads as rewritten:

"(b) In prosecutions under G.S. 14-107 the prima facie evidence provisions of subsections (d) and (e) apply if all the conditions of subdivisions (1) through (7) below are met. The prima facie evidence provisions of subsection (e) apply if only conditions (5) through (7) are met. The conditions are:

(1) The check or draft is delivered to a check taker.

(2) The name and mailing address of the check passer are written or printed on the check or ~~draft.~~ draft, and the check taker or acceptor has not written or printed the race or gender of the check passer on the check or draft.

(3) The check taker identifies the check passer at the time of accepting the check by means of a North Carolina driver's license, a special identification card issued pursuant to G.S. 20-37.7, or other reliable serially numbered identification card containing a photograph and mailing address of the person in question.

(4) The license or identification card number of the check passer appears on the check or draft.

(5) After dishonor of the check or draft by the bank or depository, the acceptor sends the check passer a letter by certified mail, to the address recorded on the check, identifying the check or draft, setting forth the circumstances of dishonor, and requesting rectification of any bank error or other error in connection with the transaction within 10 days.

An acceptor may advise the check passer in a letter that legal action may be taken against him if payment is not made within the prescribed time period. Such letter, however, shall be in a form which does not violate applicable provisions of Article 2 of Chapter 75.

(6) The acceptor files the affidavit described in subdivision (7) with a judicial official, as defined in G.S. 15A-101(5), before issuance of the first process or pleading in the prosecution under G.S. 14-107. The affidavit must be kept in the case file (attached to the criminal pleading in the case).

(7) The affidavit of the acceptor, sworn to before a person authorized to administer oaths, must:

a. State the facts surrounding acceptance of the check or draft. If the conditions set forth in subdivisions (1) through (5) have been met, the specific facts demonstrating observance of those conditions must be stated.

b. Indicate that at least 15 days have elapsed since the mailing of the letter required under subdivision (5) and that the check passer has failed to rectify any error that may have occurred with respect to the dishonored check or draft.

c. Have attached a copy of the letter sent to the check passer pursuant to subdivision (5).

d. Have attached the receipt, or a copy of it, from the United States Postal Service certifying the mailing of the letter described in subdivision (5).

e. Have attached the check or draft or a copy thereof, including any stamp, marking or attachment indicating the reason for dishonor."

Section 2. This act becomes effective October 1, 1997, and applies to checks or drafts made or drawn on or after that date.

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May 5, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **House Bill 790 - No Race or Gender on Checks.**

House Bill 790 amends G.S. 14-107.1(b) which sets out the conditions that must be met for a prima facie case in prosecutions of worthless check cases. Under G.S. 14-107, it is unlawful for any person to "draw make, utter or issue and deliver to another" a check or draft when the person knows at the time that the maker or drawer has insufficient funds on deposit in or credit with the bank with which to pay the check or draft. If the amount of the check is more than $2,000, the person is guilty of a Class I felony. If the amount of the check is $2,000 or less, the person is guilty of a misdemeanor.

Proof of having met certain conditions, set forth in G.S. 14-107.1 is prima facie evidence that the person charged was in fact the identified check passer. The conditions include that the check is delivered to the check taker; that the name and mailing address of the passer are written or printed on the check, that the taker identified the passer by a driver's license or other photographic identification; that the acceptor notifies the passer by certified mail that the check has been dishonored and allows 10 days for the passer to correct any bank error; and that the acceptor has filed an affidavit in accordance with the section setting forth the pertinent facts.

This bill would add a limitation to this provision in cases in which the check taker in a face-to-face transaction, has written or printed the race or gender of the check passer on the check. In such cases, the check taker would lose the benefit of making a prima facie case by proving that the other conditions had been met.

This act would become effective on October 1, 1997, and applies to acts committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 899
Committee Substitute Favorable 4/24/97

Short Title: Residential Prop. Disclosure Act. (Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENTS FOR DISCLOSURES UPON THE SALE OF RESIDENTIAL PROPERTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47E-4 reads as rewritten:

"**§ 47E-4. Required disclosures.**

(a) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser a residential property disclosure statement. The disclosure statement ~~shall contain the language and be in the form set forth in subsection (b) of this section. The statement~~ shall:

(1) Disclose those items which are required to be disclosed relative to the condition of the property and of which the owner has actual knowledge; or

(2) State that the owner makes no representations as to the condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.

~~(b) A residential property disclosure statement shall read as follows:~~

~~"RESIDENTIAL PROPERTY DISCLOSURE STATEMENT~~

~~Notice to Seller and Purchaser~~

~~The North Carolina Residential Property Disclosure Act requires the owner of residential real property consisting of 1-4 units, whenever the property is to be sold,~~

~~exchanged, optioned, or purchased pursuant to a lease with option to purchase, to furnish to the purchaser a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of the property. Certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling.~~

~~Property Address/Description:_____~~

~~The undersigned owner(s) of the real property described above discloses the following present conditions of the real property of which the owner(s) has actual knowledge with regard to:~~

~~1. Any abnormality or malfunctioning of the water supply or sanitary sewage disposal system:~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~2. Any damage to or abnormality of the roof, chimneys, floors, foundation, basement, or load-bearing walls, or any leak in the roof or basement:~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~3. Any abnormality or malfunctioning of the plumbing, electrical, heating, or cooling systems:~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~4. Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired:~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~5. The real property's violation of zoning laws, restrictive covenants or building codes; any encroachment of the real property from or to adjacent real property; or notice from any governmental agency affecting this real property:~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~6. Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered):~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~The purchaser and owner may wish to obtain professional advice about, or inspections of, the real property. The owner has a duty to disclose any material inaccuracy in this statement or any material change in the real property which is discovered between the date of this statement and the closing of the transaction. The owner(s) acknowledge having examined this statement before signing below:~~

~~Owner Date Owner Date~~

~~The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further acknowledge that they have examined it before signing below:~~

~~_____ _____ _____ _____~~

~~Purchaser Date Purchaser Date~~"

(b) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this section. The disclosure statement shall include the following characteristics and conditions of the property:

(1) The water supply and sanitary sewage disposal system;

(2) The roof, chimneys, floors, foundation, basement, and other structural components and any modifications of these structural components;

(3) The plumbing, electrical, heating, cooling, and other mechanical systems;

(4) Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired;

(5) The zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from any governmental agency affecting this real property; and

(6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered), and other environmental contamination.

(c) The rights of the parties to a real estate contract as to conditions of the property of which the owner had no actual knowledge are not affected by this Article unless the residential disclosure statement states that the owner makes no representations as to those conditions. If the statement states that an owner makes no representations as to the conditions of the property, then the owner has no duty to disclose those conditions, whether or not the owner should have known of them."

Section 2. G.S. 47E-5 reads as rewritten:

"**§ 47E-5. Time for disclosure; cancellation of contract.**

(a) The owner of real property subject to this Chapter shall deliver to the purchaser the ~~written disclosures~~ disclosure statement required by this Chapter no later than the time ~~such~~ the purchaser makes an offer to purchase, exchange, or option the property, or exercises the option to purchase the property pursuant to a lease with an option to purchase. The residential property disclosure statement may be included in the real estate contract, in an addendum, or in a separate document.

(b) If the disclosure statement required by this Chapter is not delivered to ~~such~~ the purchaser ~~after~~ prior to or at the time the purchaser makes an offer, the purchaser may ~~terminate~~ cancel any resulting real estate ~~contract or withdraw the offer no later than three days after the purchaser receives the disclosure statement.~~

contract. The purchaser's right to cancel shall expire if not exercised prior to any of the following events:

(1) The end of the third calendar day following his receipt of the disclosure statement;

(2) The end of the third calendar day following the date the contract was made;

(3) Settlement or occupancy by the purchaser in the case of a sale or exchange; or

(4) Settlement in the case of a purchase pursuant to a lease with option to purchase.

Any right of the purchaser to cancel the contract provided by this subsection is waived conclusively if not exercised in the manner required by this subsection.

In order to ~~terminate~~ cancel a real estate contract when permitted by this section, the purchaser shall, within the time required above, give written notice to the owner or the owner's agent either by hand delivery or by depositing into the United States mail, postage prepaid, and properly addressed to the owner or the owner's agent. If the purchaser ~~terminates~~ cancels a real estate contract ~~or withdraws an offer~~ in compliance with this subsection, the ~~termination or withdrawal of offer~~ cancellation shall be without penalty to the purchaser, and he shall be entitled to a refund of any deposit ~~shall be promptly returned to the purchaser. Any rights of the purchaser to terminate the contract provided by this subsection are waived conclusively if not exercised prior to the earlier of settlement or occupancy by the purchaser in the case of a sale or exchange, or prior to settlement in the case of a purchase pursuant to a lease with option to purchase.~~ he may have paid. Any rights of the purchaser to cancel or terminate the contract for reasons other than those set forth in this subsection are not affected by this subsection."

Section 3. G.S. 47E-6 reads as rewritten:

"§ 47E-6. Owner liability for disclosure of information provided by others.

~~If the owner chooses to provide a disclosure of property condition pursuant to G.S. 47E-4, the~~ The owner may discharge the duty to disclose imposed by this Chapter by providing a written report attached to the residential property disclosure statement by a public agency or by an engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of the public agency's functions or the expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this section if the error, inaccuracy, or omission was made in reasonable reliance upon the information provided by the public agency or expert and the owner was not grossly negligent in obtaining the information or transmitting it."

Section 4. G.S. 47E-8 reads as rewritten:

"§ 47E-8. Agent's duty.

A real estate broker or salesman acting as ~~the~~ an agent ~~of the owner of~~ in a residential real ~~property~~ estate transaction has the duty to inform ~~the owner~~ each of his clients of the ~~owner's~~ client's rights and obligations under this Chapter. Provided the owner's real estate broker or salesman has performed this duty, the broker or

salesman shall not be responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure statement. Nothing in this Chapter shall be construed to conflict with, or alter, the broker or salesman's duties under Chapter 93A of the General Statutes."

Section 5. This act becomes effective December 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 899

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

H899-ARU-002 Page 1 of __

Date_____,1997

Comm. Sub. [YES]
Amends Title []
Second Edition

Senator

moves to amend the bill on page 1, lines 12 and 14, by deleting on each line the words "the condition", and substituting "the characteristics and condition"; and

on page 3, line 8, by inserting immediately after the word "include", the words "at least"; and

on page 4, lines 1 and 2, by deleting "any of the following events", and substituting "the following, whichever occurs first:"; and

on page 4, line 3, by deleting the word "his" and substituting the words "the purchaser's"; and

on page 4, line 19, by deleting the word "he" and substituting the words "the purchaser"; and

on page 4, line 24, by deleting the word "he" and substituting the words "the purchaser"; and

on page 4, line 43, by deleting the word "his clients" and substituting the words "the clients of the real estate broker or salesman"; and

~~on page 5, line 5,~~

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 899

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

H899-ARU-002 Page 2 of __

by ~~rewriting~~ the line to read:
"~~Section~~ 5. The amendments made by this act to G.S. 47E-4(a) become effective ~~October~~ 1, 1998. This ~~section and the~~ amendments made by ~~this act to G.S.~~ 47E-4(b) become effective when they become ~~law.~~ The amendments made ~~by~~ this act to G.S. 47E-5, 47E-6, ~~and~~ 47E-8 become effective December 1, ~~1997.~~ This act applies to ~~contracts~~ entered into on or after December 1, ~~1997.~~".

SIGNED _____
~~Amendment~~ Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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May 5, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **HOUSE BILL 899 - RESIDENTIAL PROPERTY DISCLOSURE ACT -** Representative Howard.

House Bill 899 amends the Residential Property Disclosure Act by deleting the statutory disclosure form and directing the Real Estate Commission to adopt a standard disclosure form. The bill also clarifies when the buyer's right to cancel a contract terminates when the disclosure is not furnished to the buyer at or prior to the time of the contract.

Section 1 of the bill amends G.S. 47E-4 by deleting the disclosure form in the statute and requiring the Real Estate Commission to develop a standard disclosure statement. This section also amends the matters that are to be included in a standard disclosure statement by adding disclosure of characteristics and conditions of: structural components and modifications to structural components, other mechanical systems, other land-use restrictions, and environmental contamination.

Section 2 amends the time for the buyer to cancel the contract in situations where the disclosure was not furnished to the buyer prior to or at the time of contract. Current law gives the buyer three days from the date the disclosure is given to cancel the contract. This bill provides that the right to cancel terminates either at the end of the third day following receipt of the disclosure, the end of the third day following the date the contract is made, upon settlement or occupancy in the case of sale or exchange, or settlement in the case of a purchase pursuant to a lease with option to purchase. The right to cancel is waived if not exercised within the applicable time limits, in writing, and either hand delivered or mailed to the seller or the seller's agent.

Section 3 makes a stylistic change.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 4 amends the duty of the agent to inform the owner of the property of the duty to disclose by requiring the agent to inform the agent's clients of their rights under this law, regardless whether they are the seller or the buyer.

The bill would become effective December 1, 1997.

VISITOR REGISTRATION SHEET

[redacted] 5-6-97

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
McNeil Clayton	AG's off. Rep. Comm. of Bks.
Otis M. Strickland	Deputy Commissioner of Banks
Bill Scoggin	NC BAR ASSOC.
Tim Minter	NC Association of Realtors
Miriam Baer	NC Real Estate Commission
Rob Schofield	NCJCDC
Doris Weaver	NC CWA Political Council
R. Paul Wilms	NCNBA
Mike Carpenter	NCNBA
Gary Walker	Alltel
Don McCorquodale	NCRMA
Robert Glaser	NCADA
[illegible]	NCBA
Paul Stock	NC Bankers Assn.
Dave Simmons	ZBA PA
Leone Lovell	Office of Commissioner of Banks

MINUTES
SENATE COMMERCE COMMITTEE
May 13, 1997

A meeting of the Senate Commerce Committee was held on Tuesday, May 13, 1997, at 11:00 a.m. in Room 1027 of the State Legislative Building. Eighteen members of the Committee were present. Visitor Registration Sheets are attached listing others attending the meeting.

Senator R. C. Soles, Jr., Chairman, called the meeting to order.

The following bills were considered by the Committee:

SJR 1078, A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENTS OF RICHARD CONDER AND ROBERT V. OWENS, JR., MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Senator Soles recognized Mr. Steve Rose, Counsel for Public Utilities, to explain the procedure the Committee would follow. (See attached memorandum from Mr. Rose dated May 13, 1997.) Copies of Biographical Information and Financial Statements were distributed to the Committee on each of the appointees. (A copy of this information is included with the Minutes.)

Senator Soles called upon appointee Senator Richard Conder for remarks and to answer any questions the Committee might have after which Senators Hoyle, Lee, Plyler and Warren each spoke in support of Senator Conder. The Chairman then recognized appointee Mr. Robert V. Owens, Jr., for a statement. Following several questions by members, Senator Ballance, Hoyle, Ledbetter, Lee, Kerr and Rand spoke in support of Mr. Owens.

Senator Plyler moved to confirm the names of J. Richard Conder and Robert V. Owens, Jr., to the North Carolina Utilities Commission for the period of eight years and he further moved that SJR 1078 be given a favorable report. Motion carried.

HB 400, AN ACT TO REWRITE THE AUTHORITY OF THE STATE BANKING COMMISSION TO ASSESS BANKS AND CONSUMER FINANCE LICENSEES FOR THE MAINTENANCE AND OPERATION OF THE OFFICE OF THE COMMISSIONER OF BANKS.

Representative Tim Tallent, the bill sponsor, explained the bill. (See Memorandum from Karen Cochrane Brown, Committee Counsel, dated May 12, 1997, for full explanation and also a report entitled "Revision of Bank and Consumer Finance Assessments - House Bill 400" for pertinent information).

Mr. Hal Lingerfelt, Commissioner of Banks, was present and assisted Representative Tallent in answering questions.

Senator Warren moved that HB 400 be given a favorable report and that it be re-referred to the Finance Committee. Motion carried.

C.S. HB 790, AN ACT TO PROVIDE THAT A CHECK TAKER OR ACCEPTOR SHALL NOT WRITE OR PRINT THE RACE OR GENDER ON THE CHECK OR DRAFT OF A CHECK PASSER.

This committee substitute bill was considered at the previous meeting of the committee and given a favorale report. Senator Rand moved that the vote by which the committee substitute bill received a favorable report be reconsidered. Motion carried.

Senator Rand then sent forward an amendment and moved its adoption. (Copy attached.) After a brief explanation, the amendment was adopted by the Committee. Senator Rand then moved that C. S. for HB 790, as amended, be given a favorable report and that it be rolled into a committee substitute. Motion carried.

The meeting adjourned at 12 Noon.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, May 13, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **400** Bank Assessment/AB
Sequential Referral: None
Recommended Referral: Finance

S.J.R. **1078** Confirmation/Richard Conder & Robert V. Owens, Jr., NC Utilities Commission
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, May 14, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**790** No Race of Gender on Checks.

Draft Number:	PCS1371
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

FILED - SENATE

S

S 1078 MAY 8 1997 D

SENATE JOINT RESOLUTION DRSJR2754-LB244(5.7)

PRINCIPAL CLERK

Sponsors: Senator Soles.

Referred to:

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENTS OF RICHARD CONDER AND ROBERT V. OWENS, JR. MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

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

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the names of his appointees to serve full terms on the North Carolina Utilities Commission;

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

Section 1. The appointment of Richard Conder to the North Carolina Utilities Commission for a term beginning July 1, 1997, and expiring June 30, 2005, is confirmed.

Section 2. The appointment of Robert V. Owens, Jr. to the North Carolina Utilities Commission for a term beginning July 1, 1997, and expiring June 30, 2005, is confirmed.

Section 3. This resolution is effective upon ratification.

North Carolina General Assembly
Legislative Services Office

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

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

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

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

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

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

May 13, 1997

MEMORANDUM

TO: **Senate Committee on Commerce**

FROM: **Steven Rose, Committee Counsel for Public Utilities**

RE: **Senate Joint Resolution 1078; Confirmation of appointments of J. Richard Conder and Robert V. Owens, Jr. to the North Carolina Utilities Commission**

Senate Joint Resolution 1078 confirms the appointments of J. Richard Conder and Robert V. Owens, Jr. as members of the North Carolina Utilities Commission. Senator Conder and Mr. Owens were appointed by Governor Hunt to serve terms beginning on July 1, 1997 and ending on June 30, 2005.

The North Carolina Utilities Commission consists of seven commissioners who are appointed for eight year terms. Commissioners are appointed by the Governor and must be confirmed by the General Assembly by Joint Resolution.

A Utilities Commissioner is paid the same salary as a Superior Court Judge, $90,915 at present. There are fixed salary increases based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years. Members of the Utilities

Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment.

During service on the Commission, a Commissioner may not engage in any other employment, business, profession or vocation. During the term of office the Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

The General Assembly created the Utilities Commission and establishes policies which the Commission carries out, usually with broad discretion. The Commission is both a regulator of public utilities, as well as a judge in all contested matters relating to public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, telecommunications services, water and sewer services, taxis, buses, trains, trucking services, express package and mail services, and radio common carriers. The extent of this regulation varies from utility to utility, and there are limitations imposed by federal law. The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of utility rates, the adjustment of electric utility rates based upon fuel cost changes, the adjustment of natural gas rates based upon changes in the cost of natural gas, the provision of new utility services, and the adjudication of complaints concerning the services of public utilities. Again,

the extent of the Commission's jurisdiction varies from utility to utility and is effected in some cases by federal law.

Article 2.

Organization of Utilities Commission.

§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.

(a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be eight years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the eighth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975, one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for eight years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then current session of the General Assembly.

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as the chairman shall receive one thousand dollars ($1,000) additional per annum. In lieu of merit and other increment raises paid to regular State employees, each commissioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. "Service" means service as a member of the Utilities Commission.

(i) The standards of judicial conduct provided for judges in Article 30 Chapter 7A of the General Statutes shall apply to members of the Commission. Members of the Commission shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.

(j) Members of the Commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a). (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 867, ss. 1, 2; 1977, c. 468, s. 1; c. 913, s. 2; 1983 (Reg. Sess., 1984), c. 1116, s. 91; 1989, c. 781, s. 41.2; 1993 (Reg. Sess., 1994), c. 769, s. 7.4(b); 1996, 2nd Ex. Sess., c. 18, s. 28.2(b).)

§ 62-11. Oath of office.

Each utilities commissioner before entering upon the duties of his office shall file with the Secretary of State his oath of office to support the Constitution and laws of the United States and the Constitution and laws of the State of North Carolina, and to well and truly perform the duties of his said office as utilities commissioner, and that he is not the agent or attorney of any public utility, or an employee thereof, and that he has no interest in any public utility. (1933, c. 134, s. 5; 1935, c. 280; 1939, c. 404; 1941, c. 97; 1963, c. 1165, s. 1.)

J. Richard Conder
1401 Carolina Drive
Rockingham, N. C. 28379

Education:

College: BS Degree in Accounting
East Carolina University

High School: Hamlet High School 1949

Other: Louisiana State University
Graduate School of Banking

N. C. Bankers Association School
Chapel Hill, N. C.

Personal Data:

Married, Three (3) Children, two daughters and one son

Member First Presbyterian Church, Rockingham, N. C.

Elder, First Presbyterian Church, Rockingham, N. C.

Experience:

1974 to Present - Vice President
First Union National Bank

1960 to 1974 Southern National Bank
Senior Vice President-Area Manager

1958 to 1960 Lundin and Spencer, CPA

Military Service:

U. S. Air Force
Honorable Discharge 1955

OTHER RESPONSIBILITIES:

County Commissioner 1962 to 1984 Richmond County

Chairman of Board for 20 years. 1964 to 1984

President of North Carolina County Commissioners Association 1973

President, National Association of Counties 1980

North Carolina Senator 1984 to Present

Chairman, Children and Youth Committee - 1987 - 1989

Chairman, N. C. Senate Education Committee - 1989 - 1992

Chairman, N. C. Senate Mental Health Committee 1993 - 1994

Majority Leader, N. C. Senate 1993 - to present

Civic Involvement:

Former Chairman Richmond County Economic Development Authority

Former President of Hamlet and Rockingham Rotary Clubs.

Former Hospital Trustee Richmond Memorial Hospital

Former Chairman of Cancer Drive Richmond County

Former Chairman of Heart Fund Richmond County

Former Member- President Reagan's Private Sector Initiative

Tar Heel of the Week - Raleigh News and Observer

Outstanding Alumnus Award - East Carolina University

N. C. Distinguished Citizens Award 1982

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

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

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

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

Name of Person Filing: J. Richard Conder

Home Address: 1401 Carolina Drive
Rockingham, N. C. 28379

Home Telephone: 910-895-9747

Occupation, Position, or Title: V.P. First Union Bank/N. C. Senate

Employer: First Union Bank/State of N. C.

Office Address: 202 E. Washington Street
Rockingham, N. C. 28379

Office Telephone: 910-997-5551

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

N. C. Utilities Commission
Name of Board

At Large
Position (example = at large position)

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

*Home - 1401 Carolina Drive

Rockingham, N.C. 28379

Joint Ownership with spouse.

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

*First Union National Bank

*Carolina Fincorp

These are held in a self directed IRA

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

None

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

Unknown

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

N/A

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

N/A

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

*First Union Retirement Fund (Personal)

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

N/A

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

Salary - First Union Bank - will resign if confirmed

Salary - N.C. Senate - will resign if confirmed

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

N/A

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

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

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

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

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

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

V.P. - First Union National Bank - Vice President for 23 years as City Executive and Manager, including business development.

I assume that our Corporate Headquarters in Charlotte does routine banking business with the State of North Carolina.

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

My wife owns the following utility stocks:

*Duke Power

*C.P. & L.

If these stocks pose a conflict of interest, she will dispose of them immediately.

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

N/A

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

N/A

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

My wife's investments were paid 100% from her earnings as Director of Literacy at Richmond Community Community College. As indicated, she will dispose of them if necessary.

VERIFICATION

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

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

May 13, 1997
Date

J. Richard Corder
Signature

STATE OF NORTH CAROLINA

COUNTY OF Wake

Subscribed and sworn to before me this the 13th day of May 19 97.

My Commission Expires:
1/24/2000

Beverly Adams
Notary Public

BIOGRAPHICAL SKETCH
ROBERT V. OWENS, JR.

Post Office Box 968
Nags Head, NC 27959
(919) 441-5336

505 Amanias Dare Street
Manteo, NC 27954
(919) 473-2721

Personal Information:
Life-long resident of Dare County (64 years)
Married to Sarah A. Owens for 41 years
Two children: R.V. Owens, III, Manteo, NC, a Dare County entrepreneur
Married to Julie Tillett
Two children--Shannon and Robert Daniel ("Bo")

Lisa S. Hooper, Bruxton, NC, Homemaker and Active Community Volunteer
Married to Edgar Hooper, Jr.
Two children-Chase and Avery

Business Background:
Co-owner and manager of Owens' Restaurant, a family business in existence since 1946
Co-owner of a fast-food franchise in Dare County since 1985

Military/Education Background:
United States Coast Guard
Attended East Carolina University
Graduated from Manteo High School

Government Involvement:
Director of Governor's Eastern Office; 1993 to present
Dare County Board of Commissioners; 1970-1978; 1984 to present; Chairman, 13 years
North Carolina Tax Study Commission; 1986-1988
North Carolina State Banking Commission; 1982-1984
North Carolina State Parks and Recreation Commission; 1980-1982

Community Involvement:
Member of Manteo Baptist Church
Member of Manteo Lions Club, past president
Member of Manteo Masonic Lodge
Member of Dare County Shrine Club, past president
Served on numerous local commissions and committees

Special Recognition:
Leadership Award for Promotion of Education and Technology in Dare County Schools
Leadership Award for Promotion of Dare County Babe Ruth World Series
Dare County Citizen of the Year Award
Town of Manteo Citizen of the Year Award
Leadership Award for North Carolina Mentally Handicapped

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

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

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

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

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

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

Name of Person Filing Robert V. Owens, Jr

Dir. Governor's East Office
State Employee Position, Agency

Governor / East Office
Name of Board or Commission

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

Robert V. Owens, Jr. 5/2/97
Signature Date

* Note: Last filed 2/22/96

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
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SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

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Name of Person Filing Robert V. Owens, Jr.

Governor's Office
State Employee Position, Agency

Director, Governor's Eastern Office
Name of Board or Commission

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

Robert V. Owens Jr. 2/15/96
Signature Date

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
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SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

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Name of Person Filing Robert V. Owens Jr.

Director, Eastern Governor's Office
State Employee Position, Agency

Name of Board or Commission

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

Robert V. Owens Jr. 7/1/95
Signature Date

→ SAME INFO AS PREVIOUSLY FILED
NO CHANGE IN REPORT OR STATUS.
RVO

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

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST

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

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

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

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

Name of Person Filing Robert V. Owens, Jr.

Director, Governor's Eastern Office
State Employee Position, Agency

Name of Board or Commission

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

Robert V. Owens, Jr. March 2, 1994
Signature Date

6/8/93

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

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

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

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

Name of Person Filing: Robert V. Owens Jr.

Home Address: 7114 S. VA. Dare Trail
Nags Head, N.C. 27959

Home Telephone: 919-441-5336

Occupation, Position, or Title: Owner

Employer: Owens' Motel / Restaurant

Office Address: 7114 A. S. VA. Dare Trail
Nags Head, N.C. 27959

Office Telephone: 919-441-7309

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

Eastern Office of the Governor (Bobby Owens 919-514-4825)
Name of Board

Director
Position (example = at large position)

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

* Owens' Motel and Restaurant property in South Nags Head 16½ M.P. Lower beach area.

* Lot adjoining Restaurant property 50 X 400 same location

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

None

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

* Owens' Motel and Restaurant
* Kentucky Fried Chicken store on Outer Banks, Nags Head and Kill Devil Hills (2)

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

No

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

No

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

NONE

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

NONE

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

(Same as above)

East Carolina Bank Manteo N.C. (Note / Deed of Trust)

Centura Bank Manteo N.C.

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

Salaries (from business as listed above)
Salary (Dare Cnty Commissioner)
Chairman of Dare County Commissioners

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

NO

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

N/A

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

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

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

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

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

NONE

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

NONE

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

NONE

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

NONE

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

NONE

VERIFICATION

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

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

June 1, 1993
Date

Robert V. Owens Jr.
Signature

STATE OF NORTH CAROLINA

COUNTY OF Dare

Subscribed and sworn to before me this the 1 day of June 1993.

My Commission Expires:
1/7/95

Carol Ausbee
Notary Public

HOUSE BILL 400

Short Title: Bank Assessments/AB. (Public)

Sponsors: Representatives Tallent and Ramsey.

Referred to: Commerce, if favorable, Finance.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE AUTHORITY OF THE STATE BANKING COMMISSION TO ASSESS BANKS AND CONSUMER FINANCE LICENSEES FOR THE MAINTENANCE AND OPERATION OF THE OFFICE OF THE COMMISSIONER OF BANKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-122 reads as rewritten:

"**§ 53-122. Fees ~~for examinations and other services.~~ and assessments.**

(a) For the purpose of ~~paying the salaries and necessary traveling expenses~~ operating and maintaining the office of the Commissioner of Banks, ~~State bank examiners, assistant State bank examiners, clerks, stenographers and other employees of the Commissioner of Banks,~~ banks and consumer finance licensees doing business under the authority of Chapter 53 of the General Statutes shall pay the following fees and assessments ~~shall be paid~~ into the office of the Commissioner of ~~Banks:~~ Banks within 10 days after the assessment:

~~(1) Each bank and each branch and each limited service facility of any bank which under the laws of the State of North Carolina is subject to supervision and examination by the Commissioner of Banks and is authorized to do business or is in process of voluntary liquidation, shall, within 10 days after the assessment has been made, pay into the office of the Commissioner of Banks according to its total resources as shown by its report of condition made to the Commissioner of Banks at the close of business December 31, 1978, and on the thirty-first day of December, or the date most~~

~~nearly approximating same of each year thereafter on which a report of condition is made to the Commissioner of Banks not in excess of the following fees for its annual examination: eighty-five dollars ($85.00) for the first one hundred thousand dollars ($100,000) of assets or less, twelve dollars ($12.00) for each one hundred thousand dollars ($100,000) or fraction in excess thereof, and three dollars and fifty cents ($3.50) for each one hundred thousand dollars ($100,000) or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such; provided, however, with respect to loan agencies or brokers subject to the provisions of Article 15 of Chapter 53 of the General Statutes, the fee shall be one hundred seventy dollars ($170.00) for the first one hundred thousand dollars ($100,000) of assets or less, and twelve dollars ($12.00) for each one hundred thousand dollars ($100,000) or fraction in excess thereof.~~

~~(2) All examinations made other than those provided for in subdivision (1) hereof shall be deemed special examinations and for such special examination the bank shall pay into the office of the Commissioner of Banks the following fees for each special examination: eighty-five dollars ($85.00) for the first one hundred thousand dollars ($100,000) of assets or less, twelve dollars ($12.00) for each one hundred thousand dollars ($100,000) or fraction in excess thereof, and three dollars and fifty cents ($3.50) for each one hundred thousand dollars ($100,000) or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such; provided, however, with respect to loan agencies or brokers subject to the provisions of Article 15 of Chapter 53 of the General Statutes, the fee shall be one hundred seventy dollars ($170.00) for the first one hundred thousand dollars ($100,000) of assets or less, and twelve dollars ($12.00) for each one hundred thousand dollars ($100,000) or fraction in excess thereof. The fees paid for special examination shall be based on the assets of the bank examined as of the date of such examination.~~

(1) Banks. -- Each bank shall pay a cumulative assessment based on its total assets, as shown on its report of condition made to the Commissioner of Banks as of December 31 each year or the date most nearly approximating the same, not to exceed the amount determined by applying the following schedule: (i) on the first fifty million dollars ($50,000,000) of assets, or fraction thereof, six thousand dollars ($6,000); (ii) on assets over fifty million dollars ($50,000,000), but not more than two hundred fifty million dollars ($250,000,000), twelve dollars ($12.00) per one hundred thousand dollars ($100,000), or fraction thereof; (iii) on assets over two hundred fifty million dollars ($250,000,000), but not more than five

hundred million dollars ($500,000,000), nine dollars ($9.00) per one hundred thousand dollars ($100,000), or fraction thereof; (iv) on assets over five hundred million dollars ($500,000,000), but not more than one billion dollars ($1,000,000,000), seven dollars ($7.00) per one hundred thousand dollars ($100,000), or fraction thereof; (v) on assets over one billion dollars ($1,000,000,000), but not more than ten billion dollars ($10,000,000,000), five dollars ($5.00) per one hundred thousand dollars ($100,000), or fraction thereof; and (vi) on assets over ten billion dollars ($10,000,000,000), three dollars ($3.00) per one hundred thousand dollars ($100,000), or fraction thereof. Additionally, each bank shall pay an assessment on trust assets held by it in the amount of one dollar ($1.00) per one hundred thousand dollars ($100,000) of the assets, or fraction thereof; except that banks are not required to pay assessments on real estate held as trust assets.

(2) Consumer Finance Licensees. -- Each consumer finance licensee shall pay an assessment not to exceed eighteen dollars ($18.00) per one hundred thousand dollars ($100,000) of assets, or fraction thereof, plus a fee of three hundred dollars ($300.00) per office; provided, however, a consumer finance licensee shall pay a minimum annual assessment of not less than five hundred dollars ($500.00). The assessment shall be determined on a consumer finance licensee's total assets as shown on its report of condition made to the Commissioner of Banks as of December 31 each year, or the date most nearly approximating the same.

(3) Special Assessment. -- If the Commissioner of Banks determines that the financial condition or manner of operation of a bank or consumer finance licensee warrants further examination or an increased level of supervision, or in the event of a merger or conversion of a savings institution organized under State or federal law into a bank, or conversion of a federally chartered bank into a State bank, the institutions may be subject to assessment not to exceed the amount determined in accordance with the schedule set forth in subdivision (1) of subsection (a) of this section for banks or subdivision (2) for consumer finance licensees.

~~(3)~~ (b) The ~~Commissioner of Banks~~ State Banking Commission may by rule set the amount to be collected for processing any application or ~~petition~~ proceeding required by law to be filed with the Commissioner and for obtaining copies of any ~~publication or~~ public record of the Banking Commission.

~~(4)~~ (c) In all civil and criminal cases tried in any of the courts of this State wherein any of the employees of the Commissioner of Banks are used as witnesses, a fee ~~of ten dollars ($10.00)~~ per ~~day~~ day, to be determined by the presiding judge, and actual expenses incurred shall be allowed such witnesses and the same shall be paid to the Commissioner of Banks by the clerk of the court of the county in which the

case is tried and thereafter charged in bill of costs as are other costs incurred in the ~~trial; and in all civil actions tried in any of the courts of this State, wherein any of the employees of the Commissioner of Banks are required as witnesses, the party requiring such employee as witness shall deposit with the Commissioner of Banks when the subpoena is served a sufficient sum to cover the witness fee of ten dollars ($10.00) per day and expenses, and such sums as may thus be advanced shall thereafter be charged in the bill of costs as other costs are charged. All sums paid under this subdivision shall be paid to the Commissioner of Banks as are fees for examination and used in like manner.~~ matter.

~~(5)~~ (d) The total ~~compensation and necessary traveling~~ expenses of the ~~employees~~ office of the Commissioner of Banks shall not in any one year exceed the total fees collected under the provisions of this section, provided ~~such~~ the expenses ~~and compensation~~ may exceed the total fees collected in any year when surplus funds are available.

~~(6)~~ (e) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. If the estimated fees and assessments provided for under ~~subdivisions (1) and (2)~~ this section shall exceed the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may reduce by uniform percentage the fees provided for in ~~subdivisions (1) and (2) of this section but not in a percentage greater than fifty percent (50%) nor to an amount which will reduce the amount of the fees to be collected below the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year.~~ this section. If the estimated fees and assessments provided for under ~~subdivisions (1) and (2)~~ this section shall be less than the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may increase by uniform percentage the fees provided for in ~~subdivisions (1) and (2) of~~ this section to an amount which will increase the amount of the fees and assessments to be collected to an amount at least equal to the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. ~~Such fees shall be reduced whenever a surplus exists which exceeds the estimated cost of operating the office of the Commissioner of Banks for one year, even if such reduction shall result in the collection of a smaller sum than the estimated cost of maintaining the office of the Commissioner of Banks for that year.~~ In no event shall any surplus at the end of any fiscal year resulting from the collection of fees and assessments pursuant to this section revert to the general fund.

(f) The Commissioner of Banks may collect the assessments provided for in subsection (a) of this section annually or in periodic installments as approved by the State Banking Commission."

Section 2. G.S. 53-184(b) reads as rewritten:

"(b) Each licensee shall file annually with the Commissioner of Banks on or before the thirty-first day of March for the 12 months' period ending the preceding December 31, reports on forms prescribed by the Commissioner. ~~Such reports~~ Reports shall disclose in detail and under appropriate headings the ~~resources,~~ assets

and liabilities of ~~such licensee at the beginning and at the end of the period,~~ the licensee, the income, expense, gain, loss, ~~and a reconciliation of surplus or net worth with the balance sheets, the ratios of the profits to the assets reported, the monthly average number and amount of loans outstanding and a classification of loans made, by size and by security,~~ and ~~such~~ any other information as the Commissioner may require. ~~Such reports~~ Reports shall be verified by the oath or affirmation of the owner, manager, president, vice-president, cashier, secretary or treasurer of ~~such~~ the licensee."

Section 3. G.S. 53-184(d) is repealed.

Section 4. This act becomes effective January 1, 1998, and applies to assessments due for years beginning with 1998.

North Carolina General Assembly
Legislative Services Office

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

e W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
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(919) 733-2578

May 12, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **House Bill 400 - Bank Assessments/AB**

House Bill 400 amends G.S. 53-122 to rewrite the provisions relating to fees and assessments which banks and consumer finance licensees are charged for the maintenance and operation of the office of the Commissioner of Banks.

Under current law, banks are assessed $85 for the first $100,000 of assets and $12 per $100,000 for assets in excess of $100,000. The assessment must be paid within ten days of the assessment which is based on the annual report of total assets which the bank makes to the Commissioner. Trust assets are currently assessed at the rate of $3.50 for each $100,000, and consumer finance licensees are assessed at $170 for the first $100,000 of assets and $12 per $100,000 for assets in excess of $100,000.

This bill proposes the following schedule for banks: $6,000 on the first $50,000,000 of assets, $12 per $100,000 on assets between $50,000,000 and $250,000,000;$9 per $100,000 on assets between $250,000,000 and $500,000,000; $7 per $100,000 on assets between $500,000,000 and $1,000,000,000; $5 per $100,000 on assets between $1,000,000,000 and $10,000,000,000; and $3 per $100,000 on assets in excess of $10,000,000,000. In addition, banks must pay an assessment of $1 per $100,000 on trust assets. Consumer finance licensees will be assessed at the rate of $18 per $100,000 of assets plus $300 per office, with a minimum annual assessment of $500.

The Commissioner of Banks is also authorized to make special assessments when it is determined that further examinations or increased supervision is necessary. A special assessment may not exceed the amount determined by the initial assessment.

The bill also changes the fee of $10 per day which is charged in civil and criminal cases when employees of the Commissioner of Banks are used as witnesses. This bill allows the presiding

judge to determine the per day fee which will be charged at the end of the trial along with other costs.

The Commissioner retains the authority to increase or decrease assessments when warranted to meet the office's operating expenses. However, this bill deletes the provision that the Commissioner may not reduce the fees and assessments by more than fifty percent for any one year.

Section 2 of the bill revises the provision relating to the reports which must be filed by consumer finance licensees to update the language.

Section 3 deletes an outdated provision which requires consumer finance affiliates to file composite financial reports. The all now file consolidated reports.

The act is made effective January 1, 1998 and applies to assessments due for years beginning with 1998.

REVISION OF BANK AND CONSUMER FINANCE ASSESSMENTS
HOUSE BILL 400

In response to a state audit of the Office of the Commissioner of Banks, the North Carolina Banking Commission conducted a study of (1) the cost of examining the various industries under the supervision of the Banking Commission; (2) the method of calculating the annual assessment of state-chartered banks and consumer finance licensees; (3) fee structures of the Office of the Comptroller of the Currency and our sister states; (4) changes in the banking industry since the last revision of the assessment schedule in 1979; and (5) clarification of existing language within the current statute.

Findings of the study included:

- the current assessment schedule is not fair and causes a disproportionate burden on large banks, while the assessment on some banks did not cover the direct cost of their examinations;
- bank assessments are currently supplementing the cost of regulating non-bank operations in the agency; and
- our current assessment schedule places North Carolina at a competitive disadvantage in maintaining a state-chartered system in an interstate banking environment.

House Bill 400 addresses the concerns of the Banking Commission. The proposed bill more evenly distributes the cost of operating the Office of the Commissioner of Banks among the state-chartered banks and non-bank operations supervised by the agency. Flexibility is maintained in the proposed bill to allow the Banking Commissioner to adjust the assessments within a stated range to ensure adequate funding for the agency. The total assessments under the proposed bill will be less than the current statute. Most state-chartered banks will see a decrease in their assessments, and the consumer finance licensees will see an increase in their assessments.

The proposed bill has been discussed at several meetings of the State Banking Commission and with the trade associations of the banking and consumer finance industries. We know of no opposition to the bill.

BANK ASSESSMENT CALCULATIONS

CURRENT STATUTE		PROPOSED BILL	
First $100,000 of Assets	$85	First $50 Million of Assets	$6,000
Assets Over $100,000	$12 per $100,000	$50 Million-$250 Million	$12 Per $100,000
		$250 Million-$500 Million	$9 Per $100,000
		$500 Million- $1 Billion	$7 Per $100,000
		$1 Billion-$10 Billion	$5 Per $100,000
		Assets Over $10 Billion	$3 Per $100,000
Estimated Annual Assessment	$6,045,000	Estimated Annual Assessment	$3,071,000

CONSUMER FINANCE ASSESSMENT CALCULATION

CURRENT STATUTE		PROPOSED BILL	
First $100,000 of Assets	$170	$18 Per $100,000 of Assets	
Assets over $100,000	$12 per $100,000	Plus $300 per Office	
		Minimum Annual Assessment	$500
Estimated Annual Assessment	$ 304,000	Estimated Annual Assessment	$494,000

STATE-CHARTERED COMMERCIAL BANK
HISTORICAL PROFILE
1979 - 1996

Year	*No. of Banks*	*Total Assets*
1979	57	7,201,055,000
1980	56	7,641,345,000
1981	52	8,675,501,000
1982	50	9,461,674,000
1983	50	10,213,510,000
1984	46	11,606,443,000
1985	46	10,361,363,000
1986	49	12,403,815,000
1987	53	13,590,301,000
1988	56	15,204,120,000
1989	62	16,845,388,000
1990	63	21,858,311,000
1991	66	23,759,310,000
1992	64	25,539,715,000
1993	57	30,617,010,000
1994	54	33,513,073,000
1995	50	44,915,467,000
1996	46	49,146,314,000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 790
Committee Substitute Favorable 4/22/97

Short Title: No Race or Gender on Checks. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CHECK TAKER OR ACCEPTOR SHALL NOT WRITE OR PRINT THE RACE OR GENDER ON THE CHECK OR DRAFT OF A CHECK PASSER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107.1(b) reads as rewritten:

"(b) In prosecutions under G.S. 14-107 the prima facie evidence provisions of subsections (d) and (e) apply if all the conditions of subdivisions (1) through (7) below are met. The prima facie evidence provisions of subsection (e) apply if only conditions (5) through (7) are met. The conditions are:

(1) The check or draft is delivered to a check taker.

(2) The name and mailing address of the check passer are written or printed on the check or ~~draft.~~ draft, and the check taker or acceptor has not written or printed the race or gender of the check passer on the check or draft.

(3) The check taker identifies the check passer at the time of accepting the check by means of a North Carolina driver's license, a special identification card issued pursuant to G.S. 20-37.7, or other reliable serially numbered identification card containing a photograph and mailing address of the person in question.

(4) The license or identification card number of the check passer appears on the check or draft.

(5) After dishonor of the check or draft by the bank or depository, the acceptor sends the check passer a letter by certified mail, to the address recorded on the check, identifying the check or draft, setting forth the circumstances of dishonor, and requesting rectification of any bank error or other error in connection with the transaction within 10 days.

An acceptor may advise the check passer in a letter that legal action may be taken against him if payment is not made within the prescribed time period. Such letter, however, shall be in a form which does not violate applicable provisions of Article 2 of Chapter 75.

(6) The acceptor files the affidavit described in subdivision (7) with a judicial official, as defined in G.S. 15A-101(5), before issuance of the first process or pleading in the prosecution under G.S. 14-107. The affidavit must be kept in the case file (attached to the criminal pleading in the case).

(7) The affidavit of the acceptor, sworn to before a person authorized to administer oaths, must:

a. State the facts surrounding acceptance of the check or draft. If the conditions set forth in subdivisions (1) through (5) have been met, the specific facts demonstrating observance of those conditions must be stated.

b. Indicate that at least 15 days have elapsed since the mailing of the letter required under subdivision (5) and that the check passer has failed to rectify any error that may have occurred with respect to the dishonored check or draft.

c. Have attached a copy of the letter sent to the check passer pursuant to subdivision (5).

d. Have attached the receipt, or a copy of it, from the United States Postal Service certifying the mailing of the letter described in subdivision (5).

e. Have attached the check or draft or a copy thereof, including any stamp, marking or attachment indicating the reason for dishonor."

Section 2. This act becomes effective October 1, 1997, and applies to checks or drafts made or drawn on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 790 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) RAND
Sen.)

moves to amend the bill on page ONE, line 14

( ) WHICH CHANGES THE TITLE

by deleting "HAS NOT WRITTEN OR PRINTED" AND ~~ADDING ON THAT~~ SUBSTITUTING WITH "SHALL NOT BE REQUIRED TO WRITE OR PRINT."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 790
Committee Substitute Favorable 4/22/97
Proposed Senate Committee Substitute H790-PCS1371

Short Title: No Race or Gender on Checks. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CHECK TAKER OR ACCEPTOR SHALL NOT WRITE OR PRINT THE RACE OR GENDER ON THE CHECK OR DRAFT OF A CHECK PASSER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107.1(b) reads as rewritten:

"(b) In prosecutions under G.S. 14-107 the prima facie evidence provisions of subsections (d) and (e) apply if all the conditions of subdivisions (1) through (7) below are met. The prima facie evidence provisions of subsection (e) apply if only conditions (5) through (7) are met. The conditions are:

(1) The check or draft is delivered to a check taker.

(2) The name and mailing address of the check passer are written or printed on the check or ~~draft.~~ draft, and the check taker or acceptor shall not be required to write or print the race or gender of the check passer on the check or draft.

(3) The check taker identifies the check passer at the time of accepting the check by means of a North Carolina driver's license, a special identification card issued pursuant to G.S. 20-37.7, or other reliable serially numbered identification card containing a photograph and mailing address of the person in question.

(4) The license or identification card number of the check passer appears on the check or draft.

(5) After dishonor of the check or draft by the bank or depository, the acceptor sends the check passer a letter by certified mail, to the address recorded on the check, identifying the check or draft, setting forth the circumstances of dishonor, and requesting rectification of any bank error or other error in connection with the transaction within 10 days.

An acceptor may advise the check passer in a letter that legal action may be taken against him if payment is not made within the prescribed time period. Such letter, however, shall be in a form which does not violate applicable provisions of Article 2 of Chapter 75.

(6) The acceptor files the affidavit described in subdivision (7) with a judicial official, as defined in G.S. 15A-101(5), before issuance of the first process or pleading in the prosecution under G.S. 14-107. The affidavit must be kept in the case file (attached to the criminal pleading in the case).

(7) The affidavit of the acceptor, sworn to before a person authorized to administer oaths, must:

a. State the facts surrounding acceptance of the check or draft. If the conditions set forth in subdivisions (1) through (5) have been met, the specific facts demonstrating observance of those conditions must be stated.

b. Indicate that at least 15 days have elapsed since the mailing of the letter required under subdivision (5) and that the check passer has failed to rectify any error that may have occurred with respect to the dishonored check or draft.

c. Have attached a copy of the letter sent to the check passer pursuant to subdivision (5).

d. Have attached the receipt, or a copy of it, from the United States Postal Service certifying the mailing of the letter described in subdivision (5).

e. Have attached the check or draft or a copy thereof, including any stamp, marking or attachment indicating the reason for dishonor."

Section 2. This act becomes effective October 1, 1997, and applies to checks or drafts made or drawn on or after that date.

VISITOR REGISTRATION SHEET

Commerce — 5-13-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Eddie Caldwell	NC College of Emergency Physicians
John Brubaker	Zeb Alley, PA
Stuart Dixon	N.C. Natural Gas Corp.
Mary Klenz	League of Women Voters of Charlotte -
[illegible] Smith	Office of Commissioner of Banks
Becky Street	APAP
Jerry Roberts	C.U.C.A.
David Simmons	ZDA, PA
Tommy Worth	Carolinas Healthcare System
Vicki Beede	NRTA
Terry Desmond	GTE
Ralph A. Hunt	NCHC
Lynn Holmes	BellSouth
Curt Williams	Dow's Office
Jane P. Gray	DOT
Alice Garland	Electricities
Natalie Hopkins	Charlotte Chamber
Barry Smith	Ford Corp.
Emeliza Hawthorne	NCHA
Don McConnodale	NCRMA
Hardy Dunn	Glenaire Retirement Community (CCC R of NC)
Edward P. White	Carolina Meadows, Chapel Hill (CCC R of NC)
[illegible]	NCDS

VISITOR REGISTRATION SHEET

Commerce Committee — 5-13-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Ivor W. Collins	Carol Woods Retirement Community Chapel Hill (Coast of NC)
Charles A. Hughes	N.C. Utilities Commission
J. Craig Lunt	PCMH
Michael Thompson	NC Power
John McAlister	Duke Power
Ann Upchurch	C.P&L
Luther Moser	3DA, PA
Andy Romont	N.C.L.M.
Andy Eller	NC Farm Bureau
Ruffin Poole	3DA, PA
Paul Stock	NC Bankers Assn.
Gordon Allen	" " "
Ellen S. Mahaffey	Just Citizens Board
D. Cope	DoE
Deepika Nemangadda	graduate student ⇒ UNC
George Root	NC Council of Churches
Jerry Wilkins	NC Retail Merchants Assn.

MINUTES
SENATE COMMERCE COMMITTEE
May 20, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building on Tuesday, May 20, 1997, at 11:00 a.m. Seventeen members of the Committee were present. Visitors attending the meeting are listed on the attached Visitor Registration Sheet.

Senator Soles, Chairman, called the meeting to order.

The following bills were considered by the Committee:

HB 407, AN ACT TO REPEAL THE CURRENT STATUTES REGARDING FRAUDULENT CONVEYANCES AND TO ADOPT THE UNIFORM FRAUDULENT TRANSFER ACT IN ORDER TO MODERNIZE NORTH CAROLINA LAW AND HARMONIZE OUR LAW ON THIS SUBJECT WITH THOSE STATES THAT HAVE ADOPTED THIS UNIFORM ACT.

Representative Baddour, the bill sponsor, was recognized for an explanation. He said the bill would clarify the present North Carolina statute and it would also make it consistent with laws that have been adopted in other states. He said it was drafted by the National Conference of Commissioners on Uniform State Laws and approved in 1984. It was recommended by the Business Law Section of the Bar Association. Mr. Jerry Hartsell assisted Rep. Baddour in answering questions on the bill. (See attached memorandum prepared by Committee Counsel and other related information.)

Following a lengthy discussion, Senator Rand moved that House Bill 407 be placed in a subcommittee with the hope that the Committee could pass it. He said the legislation certainly had merit. Motion carried. The following were appointed to a subcommittee:

Senator Dalton, Chairman
Senator Ballance
Senator Cochrane
Senator Rand.

HB 160, AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE STATE PORTS STUDY COMMISSION TO PROVIDE THAT AT LEAST ONE MEMBER OF THE BOARD OF THE NORTH CAROLINA STATE PORTS AUTHORITY BE AFFILIATED WITH A MAJOR EXPORTER OR IMPORTER USING THE STATE PORTS.

Representative McComas was present to explain the bill. Senator Rand said he felt sure he had an identical Senate Bill which had passed the Senate and was in the House, and he moved that House Bill 160 be given a favorable report but held until the status of the identical bill could be determined. Motion carried.

HB 114, AN ACT TO REPEAL ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE RELATING TO BULK TRANSFERS AND TO ENACT CONFORMING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Representative Culpepper, the bill sponsor, was recognized for an explanation. (See copy of memorandum to the Committee from the General Statutes Commission.) Representative Culpepper said the bill, which repeals UCC Article on Bulk Transfers, was sponsored by the General Statutes Commission, and is endorsed by the American Law Institute. Repeal is supported by the North Carolina Bar Assocation.

Many questions were asked and concern expressed. Senator Kerr spoke against the legislation.

Senator Carpenter moved that HB 114 be given a favorable report. Motion failed.

HB 414, AN ACT RELATING TO SEVERANCE PAY FOR THE PURPOSES OF UNEMPLOYMENT INSURANCE BENEFITS.

Representative Berry, the bill sponsor, said the bill allows workers who have received severance pay the opportunity to take vocational courses and be trained and be eligible to receive unemployment compensation if they use their severance pay compensation to pay for the education and training. (See attached memorandum from Committee Counsel for full explanation.)

Senator Kerr moved that HB 414 be given a favorable report. Motion carried.

SB 379, AN ACT TO EXEMPT OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES WHO HAVE FIVE YEARS CONTINUOUS EXPERIENCE IMMEDIATELY PRECEDING JANUARY 1, 1998, FROM THE TRAINING COURSE REQUIREMENT FOR OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES.

Senator East, the bill sponsor, was present to explain the bill. He said the training requirement for operators of solid waste management facilities will not apply to an operator who has five years of continuous experience as a solid waste management facility operator immediately before January 1, 1998. Senator Ledbetter sent forward an amendment and moved its adoption. (Copy attached.) Motion carried. (See attached memorandum from Committee Counsel for additional information.)

Senator Ledbetter moved that SB 379 be given a favorable report, as amended, and that it be rolled into a Committee Substitute. Motion carried.

The meeting adjourned at 12 Noon.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, May 20, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**414** Unemp. Ins. Bene. Severence Pay/AB.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **379** Solid Waste Operator Course Exempt.
Draft Number: PCS2757
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE

H.B. **114** Repeal UCC article on Bulk Transfers.

TOTAL REPORTED: 3

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 407*
Second Edition Engrossed 4/8/97

Short Title: Uniform Fraudulent Transfer Act. (Public)

Sponsors: Representatives Baddour and Culpepper (Cosponsors).

Referred to: Judiciary II.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE CURRENT STATUTES REGARDING FRAUDULENT CONVEYANCES AND TO ADOPT THE UNIFORM FRAUDULENT TRANSFER ACT IN ORDER TO MODERNIZE NORTH CAROLINA LAW AND HARMONIZE OUR LAW ON THIS SUBJECT WITH THOSE STATES THAT HAVE ADOPTED THIS UNIFORM ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 39 of the General Statutes is repealed.

Section 2. Chapter 39 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3A.

"Uniform Fraudulent Transfer Act.

"**§ 39-23.1. Definitions.**

As used in this Article:

(1) 'Affiliate' means:

a. A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not exercised the power to vote;

b. A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,
   1. As a fiduciary or agent without sole power to vote the securities; or
   2. Solely to secure a debt, if the person has not in fact exercised the power to vote;
c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or
d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) 'Asset' means property of a debtor, but the term does not include:
   a. Property to the extent it is encumbered by a valid lien;
   b. Property to the extent it is generally exempt under nonbankruptcy law; or
   c. An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) 'Claim' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) 'Creditor' means a person who has a claim.

(5) 'Debt' means liability on a claim.

(6) 'Debtor' means a person who is liable on a claim.

(7) 'Insider' includes:
   a. If the debtor is an individual,
      1. A relative of the debtor or of a general partner of the debtor;
      2. A partnership in which the debtor is a general partner;
      3. A general partner in a partnership in which the debtor is a general partner; or
      4. A corporation of which the debtor is a director, officer, or person in control;
   b. If the debtor is a corporation,
      1. A director of the debtor;
      2. An officer of the debtor;

3. A person in control of the debtor;
4. A partnership in which the debtor is a general partner;
5. A general partner in a partnership in which the debtor is a general partner; or
6. A relative of a general partner, director, officer, or person in control of the debtor;

c. If the debtor is a partnership,
1. A general partner in the debtor;
2. A relative of a general partner in, a general partner of, or a person in control of the debtor;
3. Another partnership in which the debtor is a general partner;
4. A general partner in a partnership in which the debtor is a general partner; or
5. A person in control of the debtor;

d. An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

e. A managing agent of the debtor.

(8) 'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) 'Person' means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) 'Property' means anything that may be the subject of ownership.

(11) 'Relative' means an individual related by consanguinity within the third degree as determined in accordance with G.S. 104A-1, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) 'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) 'Valid lien' means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"**§ 39-23.2. Insolvency.**

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(b) A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making transfer voidable under this Article.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

"**§ 39-23.3. Value.**

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"**§ 39-23.4. Transfers fraudulent as to present and future creditors.**

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

a. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

b. Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;
(3) The transfer or obligation was disclosed or concealed;
(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
(5) The transfer was of substantially all the debtor's assets;
(6) The debtor absconded;
(7) The debtor removed or concealed assets;
(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
(10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

"§ 39-23.5. Transfers fraudulent as to present creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

"§ 39-23.6. When transfer is made or obligation is incurred.

For the purposes of this Article:

(1) A transfer is made:
a. With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and
b. With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this Article that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this Article, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

a. If oral, when it becomes effective between the parties; or

b. If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

"**§ 39-23.7. Remedies of creditors.**

(a) In an action for relief against a transfer or obligation under this Article, a creditor, subject to the limitations in G.S. 39-23.8, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by Article 35 of Chapter 1 of the General Statutes;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure,

a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

c. Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

"**§ 39-23.8. Defenses, liability, and protection of transferee.**

(a) A transfer or obligation is not voidable under G.S. 39-23.4(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under G.S. 39-23.7(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this Article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain any interest in the asset transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under G.S. 39-23.4(a)(2) or G.S. 39-23.5 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article 9 of Chapter 25 of the General Statutes, the Uniform Commercial Code.

(f) A transfer is not voidable under G.S. 39-23.5(b):

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

"**§ 39-23.9. Extinguishment of cause of action.**

A cause of action with respect to a fraudulent or voidable transfer or obligation under this Article is extinguished unless action is brought:

(1) Under G.S. 39-23.4(a)(1), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under G.S. 39-23.4(a)(2) or G.S. 39-23.5(a), within four years after the transfer was made or the obligation was incurred; or

(3) Under G.S. 39-23.5(b), within one year after the transfer was made or the obligation was incurred.

"**§ 39-23.10. Supplementary provisions.**

Unless displaced by the provisions of this Article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel,

laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"§ 39-23.11. Uniformity of application and construction.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

"§ 39-23.12. Short title.

This Article may be cited as the Uniform Fraudulent Transfer Act."

Section 3. The Revisor of Statutes shall cause to be printed with this act all relevant portions of the official comments to the Uniform Fraudulent Transfer Act and all explanatory comments of the drafters of this act, as the Revisor deems appropriate.

Section 4. This act is effective October 1, 1997, and applies to all transfers subject to this act made on or after that date.

ARTICLE 3.

Fraudulent Conveyances.

§ 39-15. Conveyance with intent to defraud creditors void.

For avoiding and abolishing feigned, covinous and fraudulent gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, which may be contrived and devised of fraud, to the purpose and intent to delay, hinder and defraud creditors and others of their just and lawful actions and debts, every gift, grant, alienation, bargain and conveyance of lands, tenements and hereditaments, goods and chattels, by writing or otherwise, and every bond, suit, judgment and execution, at any time had or made, to or for any intent or purpose last before declared and expressed, shall be deemed and taken (only as against that person, his heirs, executors, administrators and assigns, whose actions, debts, accounts, damages, penalties and forfeitures, by such covinous or fraudulent devices and practices aforesaid, are, shall, or might be in anywise disturbed, hindered, delayed or defrauded) to be utterly void and of no effect; any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding; and in all actions by creditors to set aside gifts, grants, alienations and conveyances of lands and tenements and judgments purporting to be liens on the same on the ground that such gifts, grants, alienations, conveyances and judgments are feigned, covinous and fraudulent hereunder, it shall be no defense to the action to allege and prove that the lands and tenements alleged to be so conveyed or encumbered do not exceed in value the homestead allowed by law as an exemption: Provided, that nothing in this section shall be construed to authorize the sale under execution or other final process, obtained on any debt during the continuance of the homestead, of any interest in such land as may be exempt as a homestead. (50 Edw. III, c. 6; 13 Eliz., c. 5, s. 2; 1715, c. 7, s. 4; R.C., c. 50, s. 1; Code, s. 1545; 1893, c. 78; Rev., s. 960; C.S., s. 1005.)

FRAUDULENT CONVEYANCES AND THE UNIFORM ACT

Three Generations Of Fraudulent Conveyance Law

- the Statute of 13 Elizabeth (1570)
  basis for old U.S. law and North Carolina's current law

- the Uniform Fraudulent Conveyance Act (1918)
  ultimately adopted in 25 states; replaced by UFTA.

- the Uniform Fraudulent Transfer Act ("UFTA") (1984)
  adopted by 36 states and District of Columbia
  similar to rules applied by bankruptcy law

Extent Of UFTA Change To Current North Carolina Law

- major points: slight change
  transfers intended to defraud creditors-- no change
  transfers not for "reasonably equivalent value"-- no change
  transfers to insider for old debt-- new

- prominent technical changes
  who can object-- creditors-at-the-time vs. subsequent creditors
  covers "obligations" as well as "transfers"
  statute of limitations

- numerous clarifications, definitions

Reasons For Adopting UFTA In North Carolina

- make law consistent and uniform
  match law in majority of other states
  match bankruptcy law

- make law clear
  present statutes meaningless
  case law difficult to interpret, sometimes inconsistent

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May 20, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel and Tim Hovis, Co-Counsel to the House Judiciary II Committee

RE: **HOUSE BILL 407 - UNIFORM FRAUDULENT TRANSFER ACT -** Representative Baddour.

House Bill 407 would enact the Uniform Fraudulent Transfer Act (UFTA) which was drafted by the National Conference of Commissioners on Uniform State Laws and approved in 1984. Fraudulent transfer laws are intended to prevent people who owe money from transferring their assets to others in order to avoid those assets being available to satisfy the claims of creditor. Such actions to avoid creditors in this manner are also referred to as "defrauding creditors".

The bill would repeal the current fraudulent conveyance law in the State which is a reenactment of English law (Statutes of Elizabeth) dating to 1570 and replace it with the uniform act. Through May, 1996, the uniform act has been adopted in 33 states. The current N.C. law has not been revised or amended since at least 1924.

The bill repeals the current Article 3 of Chapter 39 of the General Statutes and adds a new Article 3A. The new Article begins with a series of definitions to be used in the Act, including separate sections containing definitions of "insolvency" and "value." A debtor is defined as insolvent if the debtor's debts are greater than all the debtor's assets. A debtor is presumed to be insolvent if he or she is not paying debts as the debts become due. "Value" is defined as the transfer of property or the satisfaction of an antecedent debt, but does not include an unperformed promise other than a promise in the ordinary course of the promisor's business. The acquisition of a debtor's interest in property pursuant to a noncollusive foreclosure sale or power of sale pursuant to a mortgage is deemed to be reasonably equivalent value. Under current law, a bid at a foreclosure sale can, depending on the circumstances, be considered to be less than fair value.

UFTA provides that a transfer is fraudulent as to **present and future creditors** if (1) the debtor made the transfer with actual intent to hinder or defraud creditors, or (2) the transfer was made without receiving a reasonably equivalent value and the debtor had unreasonably small remaining assets in relation to the debtor's business, or the debtor believed or should have believed that the debtor would incur debts beyond his or her ability to pay. The Act lists several factors which may be used to determine actual intent to defraud.

UFTA provides that a transfer is fraudulent as to **present creditors only** if the debtor made the transfer without receiving a reasonably equivalent value and the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer. No intent to hinder or defraud creditors is required. A transfer is also fraudulent as to present creditors if it was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe the debtor was insolvent.

If a transfer is deemed to be fraudulent under the Act, a creditor may avoid the transfer, attach the asset transferred, or apply for an injunction against further transfer of the asset. If a judgment is obtained against the debtor, the creditor may execute on the asset.

The Act provides for defenses and protections for persons who took from the debtor in good faith and for reasonably equivalent value.

Under current law, fraudulent transfers are subject to a three year statute of limitations. The Act provides that a creditor's claim is "extinguished" under this Act if it is not generally brought within four years after the transfer is made. An action resulting from a transfer made by an insolvent debtor to an insider for an antecedent debt is subject to a one year statute of limitation.

The bill becomes effective October 1, 1997 and applies to transfers made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 160*
Second Edition Engrossed 4/8/97

Short Title: Port User on Ports Board. (Public)

Sponsors: Representatives McComas; Capps, Smith, and Davis.

Referred to: State Government.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE STATE PORTS STUDY COMMISSION TO PROVIDE THAT AT LEAST ONE MEMBER OF THE BOARD OF THE NORTH CAROLINA STATE PORTS AUTHORITY BE AFFILIATED WITH A MAJOR EXPORTER OR IMPORTER USING THE STATE PORTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-452 reads as rewritten:

"**§ 143B-452. Creation of Authority -- membership; appointment, terms and vacancies; officers; meetings and quorum; compensation.**

The North Carolina State Ports Authority is hereby created. It shall be governed by a board composed of nine members and hereby designated as the Authority. Effective July 1, 1983, it shall be governed by a board composed of 11 members and hereby designated as the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. The Governor shall appoint seven members to the Authority, and the General Assembly shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall consist of seven persons appointed by the Governor, and four persons appointed by the General Assembly. Effective July 1, 1989, the Governor shall appoint six members to the Authority, in addition to the Secretary of Commerce, who shall serve as a voting member of the Authority by virtue of his

office. The Secretary of Commerce shall fill the first vacancy occurring after July 1, 1989, in a position on the Authority over which the Governor has appointive power.

The initial appointments by the Governor shall be made on or after March 8, 1977, two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of six years.

To stagger further the terms of members:

(1) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1991, one member shall be appointed to a term of five years, to expire on June 30, 1996; the other member shall be appointed for a term of six years, to expire on June 30, 1997;

(2) Of the members appointed by the Governor to replace the members whose terms expire on July 1, 1993, one member shall be appointed to a term of five years, to expire on June 30, 1998; the other member shall be appointed to a term of six years, to expire on June 30, 1999;

(3) Of those members appointed by the Governor to replace the members whose terms expire on July 1, 1995, one member shall be appointed to a term of five years, to expire on June 30, 2000; the other member shall be appointed to a term of six years, to expire on June 30, 2001.

Thereafter, at the expiration of each stipulated term of office all appointments made by the governor shall be for a term of six years.

The members of the Authority appointed by the Governor shall be selected from the State-at-large and insofar as practicable shall represent each section of the State in all of the business, agriculture, and industrial interests of the State. <u>At least one member appointed by the Governor shall be affiliated with a major exporter or importer currently using the State Ports.</u> Any vacancy occurring in the membership of the Authority appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor may remove a member appointed by the Governor only for reasons provided by G.S. 143B-13.

The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. To stagger further the terms of members:

(1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to

expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;

(2) Of the members appointed upon the recommendation of the President of the Senate to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993. Successors to these persons for terms beginning on or after January 1, 1997, shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of two years.

Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members appointed by the General Assembly may be removed only for reasons provided by G.S. 143B-13.

The Governor shall appoint from the members of the Authority the chairman and vice-chairman of the Authority. The members of the Authority shall appoint a treasurer and secretary of the Authority.

The Authority shall meet once in each 60 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5. <u>No member of the Authority may participate in any discussion or vote on any matter before the Authority on which the member has a conflict of interest.</u>"

Section 2. The member of the Authority representative of businesses using the State Ports, to be appointed by the Governor pursuant to Section 1 of this act, shall be appointed to replace the member of the Authority whose term expires June 30, 1998.

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

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May 20, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **HOUSE BILL 160 - PORT USER ON PORTS BOARD** - Representative McComas

House Bill 160 would require that one appointment to the State Ports Authority made by the Governor be a person affiliated with a major exporter or importer currently using the State Ports. This bill is a recommendation of the State Ports Study Commission and is very similar to Senate Bill 142 which has passed the Senate.

Section 1 of the bill amends G.S. 143B-452 which creates the State Ports Authority and its board. This provision adds the requirement that at least one of the appointees of the Governor be person affiliated with a major exporter or importer currently using the State Ports. The House added an amendment to the study commission bill to clarify that no member of the Authority may participate in any discussion or vote on any matter before the Authority on which the member has a conflict of interest.

The board of the State Ports Authority has 11 members, 7 selected by the Governor (6 appointees and the Secretary of Commerce) and 4 appointed by the General Assembly (2 upon the recommendation of the President Pro Tempore (beginning January 1, 1997), 2 upon the recommendation of the Speaker). The Governor's appointees serve 6-year terms, and their terms are currently staggered so that the Governor has one appointment per year. The General Assembly's appointees serve 2-year terms, and their terms are currently staggered so that the General Assembly appointees 2 members each year.

Section 2 of the bill provides that the Governor's appointment of a port user would be for the member whose term expires June 30, 1998.

The bill would become effective when it becomes law.

H160-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 114*

Short Title: Repeal UCC Article on Bulk Transfers. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary II.

February 12, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE RELATING TO BULK TRANSFERS AND TO ENACT CONFORMING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 25 of the General Statutes is repealed.

Section 2. G.S. 25-9-111 is repealed.

Section 3. G.S. 25-1-105(2) reads as rewritten:

"(2) Where one of the following provisions of this Chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. (G.S. 25-2-402).

Applicability of the article on bank deposits and collections. (G.S. 25-4-102).

~~Bulk transfers subject to the article on bulk transfers. (G.S. 25-6-102).~~

Applicability of the article on investment securities. (G.S. 25-8-106).

Perfection provisions of the article on secured transactions. (G.S. 25-9-103).

Governing law in the article on Funds Transfers. (G.S. 25-4A-507)."

Section 4. G.S. 25-2-403(4) reads as rewritten:

"(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions ~~(article 9), bulk transfers (article 6)~~ (article 9) and documents of title (article 7)."

Section 5. G.S. 66-186 reads as rewritten:

"**§ 66-186. Uniform commercial practice.**

~~(a)~~ This Article does not affect a security interest of the supplier in the inventory of the dealer.

~~(b) A repurchase of inventory under this Article shall not be subject to the bulk sales provisions of Article 6 of Chapter 25 of the General Statutes.~~"

Section 6. G.S. 85B-2(a)(11) reads as rewritten:

"(11) Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, ~~bulk sales,~~ sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, resales of goods by an aggrieved seller, or other resales conducted pursuant to authority in Articles 2, 4, ~~6, 7~~ 7, and 9 of Chapter 25 of the General Statutes (the Uniform Commercial Code)."

Section 7. This act becomes effective October 1, 1997. Rights and obligations arising under Article 6 of Chapter 25 of the General Statutes and G.S. 25-9-111 before the effective date of this act remain valid and may be enforced as though those statutes had not been repealed.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: Senate Commerce Committee

FROM: General Statutes Commission

DATE: May 16, 1997

RE: House Bill 114 (Repeal UCC Article on Bulk Transfers)

House Bill 114 repeals Article 6 of the Uniform Commercial Code, regulating bulk transfers, and makes conforming amendments to the Uniform Commercial Code ("UCC") and other sections of the General Statutes. Article 6, Bulk Transfers, was enacted in North Carolina as part of the UCC in 1965 and has been amended only once since its enactment.

Article 6 was revisited by the National Conference of Commissioners on Uniform State Laws and the American Law Institute in 1989. The Conference and the Institute concluded that Article 6 has become obsolete, that changes in the business and legal contexts in which sales are conducted have made regulation of bulk sales unnecessary. Both bodies therefore decided to withdraw their support for Article 6 and encourage those states that have enacted the Article to repeal it. Since that decision was made, 36 states have repealed Article 6 or its equivalent, and one state has pending legislation to repeal the Article.

The General Statutes Commission circulated to its mailing list the proposal to repeal Article 6 and received no negative comments. Repeal is supported by the North Carolina Bar Association. The Commission is not aware of any opposition to the repeal.

Bulk sales laws were originally drafted in response to a fraud perceived to be common around the turn of the century where a merchant would acquire stock in trade on credit, then sell the entire inventory ("in bulk") and abscond with the proceeds, leaving creditors unpaid. Article 6 in turn was drafted as a uniform replacement to individual state bulk sales laws. The Article imposes several duties on a buyer in bulk, primarily including the duty to give ten days' notice to the seller's creditors of the impending bulk transfer. It requires compliance even when there is no reason to believe that the seller is conducting a fraudulent transfer and imposes strict liability for noncompliance. Failure to comply with the provisions render the transfer ineffective as to the seller's creditors, even when the buyer has acted in good faith.

Modernization in the business and legal contexts in which sales are conducted have made this type of regulation of bulk sales unnecessary. Creditors are better able to make informed decisions about whether to extend credit. Changes in technology since the early 1900s have enabled credit reporting services to provide fast, accurate, and more complete credit histories at relatively small cost. Creditors no longer face the choice of extending unsecured credit or no credit at all. Retaining an interest in inventory to secure its price has become relatively simple and inexpensive under Article 9 of the UCC - adopted in every state and the District of Columbia. Creditors also have greater opportunity to collect their debts. The adoption of state long-arm statutes have greatly improved the possibility of obtaining personal jurisdiction over a debtor who flees to another state. Moreover, if a bulk sale is fraudulent, creditors have remedies under state fraudulent conveyances statutes. There appears to be no evidence that in today's economy, fraudulent bulk sales are frequent enough, or engender credit losses significant enough, to require regulation of all bulk sales, particularly since the problem bulk sales laws are designed to address is now rare.

Moreover, in view of the burden Article 6 places on the buyer, benefit to the seller's creditors in a sale in which the buyer complies with the Article is slight. All the creditors receive is ten days' notice of the sale. The Article places no responsibility on the buyer to see that the seller's creditors are actually paid. Practitioners in this field also reported to the General Statutes Commission that the common practice in bulk sales is to draft the transfer documents in such a way as to eliminate the need for compliance with Article 6.

In light of these reasons, the General Statutes Commission recommends that the North Carolina General Assembly repeal UCC Article 6, Bulk Transfers.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 414
Committee Substitute Favorable 4/24/97

Short Title: Unemp. Ins. Bene. Severance Pay/AB. (Public)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO SEVERANCE PAY FOR THE PURPOSES OF UNEMPLOYMENT INSURANCE BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-8(10) reads as rewritten:

"(10) Total and partial unemployment.

a. For the purpose of establishing a benefit year, an individual shall be deemed to be unemployed:

1. If he has payroll attachment but, because of lack of work during the payroll week for which he is requesting the establishment of a benefit year, he worked less than the equivalent of three customary scheduled full-time days in the establishment, plant, or industry in which he has payroll attachment as a regular employee. If a benefit year is established, it shall begin on the Sunday preceding the payroll week ending date.

2. If he has no payroll attachment on the date he reports to apply for unemployment insurance. If a benefit year is established, it shall begin on the Sunday of the calendar week with respect to which the claimant met the reporting requirements provided by Commission regulation.

b. For benefit weeks within an established benefit year, a claimant shall be deemed to be:
   1. Totally unemployed, irrespective of job attachment, if his earnings for such week, including payments defined in subparagraph c below, would not reduce his weekly benefit amount as prescribed by G.S. 96-12(c).
   2. Partially unemployed, if he has payroll attachment but because of lack of work during the payroll week for which he is requesting benefits he worked less than three customary scheduled full-time days in the establishment, plant, or industry in which he is employed and whose earnings from such employment (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).
   3. Part-totally unemployed, if the claimant had no job attachment during all or part of such week and whose earnings for odd jobs or subsidiary work (including payments defined in subparagraph c below) would qualify him for a reduced payment as prescribed by G.S. 96-12(c).

c. No individual shall be considered unemployed if, with respect to the entire calendar week, he is receiving, has received, or will receive as a result of his separation from employment, remuneration in the form of (i) wages in lieu of notice, (ii) accrued vacation pay, (iii) terminal leave pay, (iv) severance pay, (v) separation pay, or (vi) dismissal payments or wages by whatever name. Provided, however, if such payment is applicable to less than the entire week, the claimant may be considered to be unemployed as defined in subsections a and b of this paragraph. Sums received by any individual for services performed as an elected official who holds an elective office, as defined in G.S. 128-1.1(d), or as a member of the N. C. National Guard, as defined in G.S. 127A-3, or as a member of any reserve component of the United States Armed Forces shall not be considered in determining that individual's employment status under this subsection. Provided further, however, that an individual shall be considered to be unemployed as to receipt of severance pay for any week the individual is registered at or attending any institution of higher education as defined in G.S. 96-8(5)j., or secondary school as defined in G.S. 96-

8(5)q., or Commission approved vocational, educational, or training programs as defined in G.S. 96-13.

d. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe."

Section 2. This act is effective when it becomes law and applies to new initial claims filed on or after September 1, 1997.

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May 20, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel and William R. Gilkeson, House Commerce Committee Co-Counsel

RE: **HOUSE BILL 414 - UNEMPLOYMENT INSURANCE BENEFITS/SEVERANCE** - Representative Berry.

House Bill 414 would allow laid-off workers who received severance pay to also receive unemployment compensation during any week that that person is in school.

Current North Carolina law disqualifies a person who loses a job from receiving unemployment insurance benefits for any week in which that person receives severance pay. If the person who was making $1,000 a week is laid off and receives a lump sum of $10,000 in severance pay, that severance pay is spread out over 10 weeks so that the person is treated as if she was still employed and receiving her $1,000 a week paycheck for those 10 weeks after layoff. Only after the severance pay runs out may the employee begin receiving unemployment benefits.

Unlike some aspects of unemployment compensation law, the severance pay exclusion is not mandated federally. Not all states treat severance pay the way North Carolina does.

This bill would not change the basic way North Carolina law treats severance pay. It would, however, lift the disqualification and allow a person who got a severance package to receive unemployment benefits for any week that person was registered at or attending one of three types of schools. The types of schools, listed in the bill, are:

1. Institutions of higher learning defined in G.S. 96-8(5)j.
2. Secondary schools defined in G.S. 96-8(5)q.
3. Vocational, educational, or training programs defined in G.S. 96-13.

The bill becomes effective when it becomes law and applies to new initial claims filed on or after September 1, 1997.

S716-SMRU-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

j. Prior to January 1, 1978, any institution of higher education or State hospital located in this State which is an agency or instrumentality of this State, or which is owned or operated by the State or an instrumentality of this State (or by this State and one or more states or their instrumentalities), provided such employing unit, in each of 20 different calendar weeks within the current or preceding calendar year (whether or not such weeks are or were consecutive), has or had in employment one or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week), or in any calendar quarter in either the current or preceding calendar year paid for services in employment wages of one thousand five hundred dollars ($1,500) or more.

For purposes of this Chapter, "institution of higher education" means an educational institution in this State which: (i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such certificate; (ii) is legally authorized in this State to provide a program of education beyond high school; (iii) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for credit toward such a degree or a program of training to prepare students for gainful employment in a recognized occupation; (iv) is a public or other nonprofit institution; and (v) notwithstanding any of the foregoing provisions of this subdivision, is a university, college, or community college in the State.

For purposes of this Chapter, "State hospital" means any institution licensed by the Department of Human Resources under Chapter 122C or Chapter 131E of the General Statutes.

q. With respect to employment on and after January 1, 1978, any nonprofit elementary and secondary school. For purposes of this Chapter, "secondary school" means any school not an institution of higher education as defined in G.S. 96-8(5)j.

§ 96-13. Benefit eligibility conditions.

(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that —

(1) The individual has registered for work at and thereafter has continued to report at an employment office at regular intervals no more than four weeks apart and in accordance with such regulations as the Commission may prescribe;

(2) He has made a claim for benefits in accordance with the provisions of G.S. 96-15(a);

(3) The individual is able to work, and is available for work: Provided that, unless temporarily excused by Commission regulations, no individual shall be deemed available for work unless he establishes to the satisfaction of the Commission that he is actively seeking work: Provided further, that an individual customarily employed in seasonal employment shall, during the period of nonseasonal operations, show to the satisfaction of the Commission that such individual is actively seeking employment which such individual is qualified to perform by past experience or training during such nonseasonal period: Provided further, however, that no individual shall be considered available for work for any week not to exceed two in any calendar year in which the Commission finds that his unemployment is due to a vacation. In administering this proviso, benefits shall be paid or denied on a payroll-week basis as established by the employing unit. A week of unemployment due to a vacation as provided herein means any payroll week within which the equivalent of three customary full-time working days consist of a vacation period. For the purpose of this subdivision, any unemployment which is caused by a vacation period and which occurs in the calendar year following that within which the vacation period begins shall be deemed to have occurred in the calendar year within which such vacation period begins. For purposes of this subdivision, no individual shall be deemed available for work during any week that the individual tests positive for a controlled substance if (i) the test is a controlled substance examination administered under Article 20 of Chapter 95 of the General Statutes, (ii) the test is required as a condition of hire for a job, and (iii) the job would be suitable work for the claimant. The employer shall report to the Commission, in accordance with regulations adopted by the Commission, each claimant that tests positive for a controlled substance under this subdivision. For the purposes of this subdivision, no individual shall be deemed available for work during any week in which he is registered at and attending an established school, or is on vacation during or between successive quarters or semesters of such school attendance, or on vacation between yearly terms of such school attendance. Except: (i) Any person who was engaged in full-time employment concurrent with his school attendance, who is otherwise eligible, shall not be denied benefits because of school enrollment and attendance. Except: (ii) Any otherwise qualified unemployed individual who is attending a vocational school or training program which has been approved by the Commission for such individual shall be deemed available for work. However, any unemployment insurance benefits payable with respect to any week for which a training allowance is payable pursuant to the provisions of a federal or State law, shall be reduced by the amount of such allowance which weekly benefit amount shall be rounded to the nearest lower full dollar amount (if not a full dollar amount). The Commission may approve such training course for an individual only if:

1.a. Reasonable employment opportunities for which the individual is fitted by training and experience do not exist in the locality or are severely curtailed;

b. The training course relates to an occupation or skill for which there are expected to be reasonable opportunities for employment; and

c. The individual, within the judgment of the Commission, has the required qualifications and the aptitude to complete the course successfully; or,

2. Such approval is required for the Commission to receive the benefits of federal law.

(4) No individual shall be deemed able to work under this subsection during any week for which that person is receiving or is applying for benefits under any other State or federal law based on his temporary total or permanent total disability. Provided that if compensation is denied to any individual for any week under the foregoing sentence and such individual is later determined not to be totally disabled, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which the compensation was denied solely by reason of the foregoing sentence.

(5) The individual has participated in reemployment services, if the Division referred the individual to these services after determining, through use of a worker profiling system, that the individual would likely exhaust regular benefits and would need reemployment services to make a successful transition to new employment, unless the individual establishes justifiable cause for failing to participate in the services.

(b)(1) The payment of benefits to any individual based on services for nonprofit organizations, hospitals, or State hospitals and State institutions of higher education, other institutions of higher education, or secondary schools and subdivisions of secondary schools subject to this Chapter shall be in the same manner and under the same conditions of the laws of this Chapter as applied to individuals whose benefit rights are based on other services subject to this Chapter. Except that with respect to services in the educational institutions listed above:

a. In an instructional, research, or principal administrative capacity, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms, or, when an agreement provides instead for a

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 379

Short Title: Solid Waste Operator Course Exempt. (Public)

Sponsors: Senators East; Garwood, Page, and Webster.

Referred to: Commerce.

March 12, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES WHO HAVE FIVE YEARS CONTINUOUS EXPERIENCE IMMEDIATELY PRECEDING JANUARY 1, 1998, FROM THE TRAINING COURSE REQUIREMENT FOR OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-309.25 is amended by adding a new subsection to read:

"(f) The section does not apply to any operator of a solid waste management facility who has five years continuous experience as an operator of a solid waste management facility immediately preceding January 1, 1998."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 379

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

S379-ARN-001

Page 1 of ___

Date May 20 ,1997

Comm. Sub. []
Amends Title []
First Edition

Senator Ledbetter

moves to amend the bill on page 1, line 12, by adding between "1998" and the period the following:

", provided that the operator attends a course and completes the continuing education requirements approved by the Department."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 379
Proposed Committee Substitute S379-PCS2757

Short Title: Solid Waste Operator Course Exempt. (Public)

Sponsors:

Referred to:

March 12, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES WHO HAVE FIVE YEARS CONTINUOUS EXPERIENCE IMMEDIATELY PRECEDING JANUARY 1, 1998, FROM THE TRAINING COURSE REQUIREMENT FOR OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-309.25 is amended by adding a new subsection to read:

"(f) The section does not apply to any operator of a solid waste management facility who has five years continuous experience as an operator of a solid waste management facility immediately preceding January 1, 1998, provided that the operator attends a course and completes the continuing education requirements approved by the Department."

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

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May 20, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Counsel

RE: Senate Bill 379 (Solid Waste Operator Course Exemption)

When the General Assembly enacted the Solid Waste Management Act of 1989, it included a requirement that beginning January 1, 1996, all operators of solid waste management facilities must complete a training program. The program qualifications were to be developed by DEHNR. Last year, the General Assembly delayed the January 1, 1996 implementation date for this requirement to January 1, 1998.

Senate Bill 379 provides that the training requirement will not apply to an operator of a solid waste management facility who has five years of continuous experience as a solid waste management facility operator immediately before January 1, 1998.

An "operator" is defined in G.S. 130A-290(a)(21) as "*any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility and includes the person in charge of a shift or periods of operation during any part of the day.*"

The bill takes effect when it becomes law.

S379-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 130A-309.25. Training of operators of solid waste management facilities.

(a) The Department shall establish qualifications for, and encourage the development of training programs for, operators of incinerators, operators of landfills, coordinators of local recycling programs, and other solid waste management facilities.

(b) The Department shall work with accredited community colleges, vocational technical centers, State universities, and private institutions in developing educational materials, courses of study, and other such information to be made available for persons seeking to be trained as operators of solid waste management facilities.

(c) A person may not perform the duties of an operator of a solid waste management facility after 1 January 1998, unless he has completed an operator training course approved by the Department. An owner of a solid waste management facility may not employ any person to perform the duties of an operator unless the person has completed an approved solid waste management facility operator training course.

(d) The Commission may adopt rules and minimum standards to effectuate the provisions of this section and to ensure the safe, healthy, and lawful operation of solid waste management facilities. The Commission may establish, by rule, various classifications for operators to address the need for differing levels of training required to operate various types of solid waste management facilities due to different operating requirements at the facilities.

(e) In developing training programs for incinerator operators under this section, the Department shall establish and consult with ad hoc advisory groups to help coordinate the requirements under this section with other training programs for incinerator operators. (1989, c. 784, s. 2; 1993, c. 29, s. 1; 1995 (Reg. Sess., 1996), c. 594, s. 19.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, substituted "1 January 1998" for "1 January 1996" in subsection (c).

VISITOR REGISTRATION SHEET

[redacted] 5-20-97

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Ernest Gallo	California
Will [redacted]	J&R
Andy Romanet	N.C.L.M.
Ann Cr[redacted]	DEHNR
Alan Mibs	Bailey & Dixon LLP
James Andrews	NC AFL-CIO
Mike Okun	[illegible]
Jacquie Williams	Bell V Assoc -
Tom Whitaker	ESC
David Clegg	ESC
Brenda Dougherty	Sprint
Roberta Stolpen	VNC-Law
BILL SLOGGIN	NCBA
Anne Winner	NCBA
Jim Brown	N.C. State Ports
Lucius Pullen	Attorney
Jerry Arrowood	DMV
Drew Cook	Legislative Intern
Leighton Roper	EDA, PA
Richard Thompson	NC Power
Katherine Davis	Electricities

VISITOR REGISTRATION SHEET

Commerce Committee — 5-20-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Lori Ann Harris	Sanford Holshouser
Brad T. Clifford	Univ. of North Carolina
Floyd Lewis	General Statutes Commission
Mack Sperling	General Statutes Commission

MINUTES
SENATE COMMERCE COMMITTEE
May 27, 1997

A meeting of the Senate Commerce Committee was held on Tuesday, May 27, 1997, at 9:00 a.m. in Room 1027 of the State Legislative Building. Fifteen members of the Committee were present. Visitor Registration Sheets are attached listing others attending the meeting.

Senator R. C. Soles, Jr., Chairman, called the meeting to order.

The following bills were considered by the Committee:

HCS for SB 914, AN ACT TO REVISE THE REIMBURSEMENT METHODOLOGY FOR HOSPITAL CHARGES UNDER WORKERS' COMPENSATION.

This bill was sent back to the Senate for concurrence in the House Committee Substitute. Senator Warren moved that the Committee recommend that the Senate concur in the HCS for SB 914. Motion carried.

HB 499, AN ACT RELATING TO THE USE OF GEOGRAPHICAL INFORMATION SYSTEM DATABASE INFORMATION BY REAL ESTATE TRADE ASSOCIATIONS.

Representative Thompson, the bill sponsor, explained the bill. He said it allows the resale of data developed and operated by counties and cities public records to real estate trade associations and multiple listing services. Senator Hoyle sent forward an amendment and moved its adoption. (Copy attached.) Motion carried.

Mr. Jim Blackburn, representing the Association of County Commissioners, said some of his members have a problem with this exception to the statute. Mr. Tim Minton, N. C. Associaton of Realtors, spoke in favor of the bill.

Senator Ledbetter moved the HB 499, as amended, be given a favorable report and that it be rolled into a Committee Substitute. Motion carried

House Bill 871, AN ACT AMENDING THE WAGE AND HOUR ACT TO RAISE THE STATE MINIMUM WAGE, TO PERMIT EMPLOYERS SUBJECT TO THE STATE MINIMUM WAGE TO TAKE THE SAME TIP CREDIT AS FEDERALLY COVERED EMPLOYERS, AND TO EXEMPT COMPUTER PROFESSIONALS FROM MINIMUM WAGE AND OVERTIME PROVISIONS.

Representative Berry, the bill sponsor, said the bill raises the North Carolina minimum wage to the same level as required by federal law and thereafter tracks

any increase to the federal minimum wage. The bill also makes other changes that will conform certain State wage law to the federal minimum wage law. (See attached memorandum from Committee Counsel for the substance of these changes.)

Mr. Dana Cope from the Department of Labor assisted in answering questions from the Committee.

Senator Ballance moved that HB 871 be given a favorable report. Motion carried.

SB 891, AN ACT TO UPDATE AND REVISE THE LAWS AFFECTING LOCAL GOVERNMENT CONTRACTING.

This bill, sponsored by Senator Dalton, was referred to the Committee for concurrence in the House Committee Substitute. Senator Dalton said the bill was amended in the House Judiciary Committee, and he agrees with the changes. After a brief explanation, Senator Dalton moved that the Committee concur with the HCS for SB 891. Motion carried.

The meeting adjourned at 9:40 a.m.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, May 28, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **871** Wage & Hour Act Amendments.
Sequential Referral: None
Recommended Referral: None

FAVORABLE AS TO CONCURRENCE

S.B.(HCS)**891** Local Government Contracting.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
SEN. R. C. SOLES, JR., Chairman

Thursday, May 29, 1997

SEN. R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **499** GIS Record Exception

Draft Number:	PCS4121
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 914
House Committee Substitute Favorable 5/19/97

Short Title: Workers' Comp. Hospital Charges. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE REIMBURSEMENT METHODOLOGY FOR HOSPITAL CHARGES UNDER WORKERS' COMPENSATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-26(b) reads as rewritten:

"(b) **(Effective June 30, 1997 -- see editor's note)** Hospital Fees. -- ~~Payment for medical compensation rendered by a hospital participating in the State Plan shall be equal to the payment the hospital receives for the same treatment and services under the State Plan. Payment for a particular type of medical compensation that is not covered under the State Plan shall be based on the allowable charge under the State Plan for comparable services or treatment, as determined by the Commission.~~ Each hospital subject to the provisions of this subsection shall be reimbursed the amount provided for in this subsection unless it has agreed under contract with the ~~insurer or managed care organization~~ insurer, managed care organization, employer (or other payor obligated to reimburse for inpatient hospital services rendered under this Chapter) to accept a different amount or reimbursement methodology.

Except as otherwise provided herein, payment for medical treatment and services rendered to workers' compensation patients by a hospital shall be equal to the payment the hospital is authorized to receive for the same treatment or service under the State Plan, provided that:

(1) Payment for inpatient hospital inpatient services provided on or after July 1, 1997, and on or before December 31, 1997, shall not be less than a minimum of ninety percent (90%) nor more than a

maximum of one hundred percent (100%) of the hospital's itemized charges as shown on the UB-92 claim form.

(2) Payment for inpatient hospital services provided on or after January 1, 1998, through and including December 31, 1998, shall be not more than a maximum of one hundred percent (100%) of the hospital's itemized charges as shown on the UB-92 claim form nor less than a minimum percentage of such charges that the Commission determines would have been required to have produced an average payment rate equal to ninety-three and one-tenth percent (93.1%) of aggregate charges for all inpatient claims processed by the Commission during the fiscal year ending June 30, 1997.

(3) Payment for inpatient hospital services provided on or after January 1, 1999, shall be not more than a maximum of one hundred percent (100%) of the hospital's itemized charges as shown on the UB-92 claim form nor less than the minimum percentage established annually by the Commission as follows:

a. Beginning in the third quarter (July, August, and September) of 1998, and annually thereafter, the Commission shall review data from the State Plan to ascertain the aggregate hospital itemized charges and aggregate amounts authorized for payment by the State Plan (including payments actually made by the State Plan and deductible, coinsurance, or other amounts for which the patient/insured may have been liable) for inpatient hospital claims paid to participating hospitals by the State Plan during the immediately preceding fiscal year ending June 30. The Commission shall then utilize the data described in the preceding sentence to calculate the extent, if any, to which aggregate State Plan authorized payments were less than aggregate charges on inpatient hospital claims paid by the State Plan during the preceding fiscal year.

b. Beginning in the third quarter (July, August, and September) of 1998, and annually thereafter, the Commission shall calculate aggregate hospital itemized charges and aggregate payments authorized by the Commission on all inpatient hospital workers' compensation claims approved for payment by the Commission during the preceding fiscal year ending June 30.

c. Based on the data described in sub-subdivisions a. and b. of this subdivision, the Commission shall on or before December 1, 1998, and December 1 of each subsequent year establish a minimum percentage that will result in a payment rate for inpatient workers' compensation cases that in the aggregate bears a percentage relationship to hospital itemized charges

that is equal to the State Plan relationship between aggregate payments authorized and aggregate itemized charges for claims paid by the State Plan during the preceding fiscal year ending June 30. The percentage rate established shall be effective for the next succeeding calendar year beginning January 1 of that year.

Notwithstanding any other provisions of law, the Commission's determination of payment rates under this subsection shall:

(1) Comply with the procedures for adoption of a fee schedule established in G.S. 97-26(a);

(2) Include publication on or before October 1 of each year of the proposed payment rate, and a summary of the data and calculations on which the rate is based;

(3) Be subject to the declaratory ruling provisions of G.S. 150B-4; and

(4) Be deemed to constitute a final permanent rule under Article 2A of Chapter 150B for purposes of judicial review under Article 4 of that Chapter.

Payment for a particular type of medical compensation that is not covered under the State Plan shall be based on the allowable charge under the State Plan for comparable services or treatment, as determined by the Commission.

A hospital's itemized charges on the UB-92 claim form for workers' compensation services shall be the same as itemized charges for like services for all other payers."

Section 2. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 499

Short Title: GIS Record Exception. (Public)

Sponsors: Representatives Thompson; Boyd-McIntyre, Buchanan, Davis, Decker, Dedmon, Hill, Howard, Miner, Nichols, Sherrill, Tallent, and C. Wilson.

Referred to: Commerce, if favorable, Judiciary I.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO THE USE OF GEOGRAPHICAL INFORMATION SYSTEM DATABASE INFORMATION BY REAL ESTATE TRADE ASSOCIATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 132-10 reads as rewritten:

"**§ 132-10. Qualified exception for geographical information systems.**

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news ~~media~~ media, real estate trade associations, or Multiple Listing Services operated by real estate trade associations shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 499 DATE 5/27/97

S. B. No. _____ Amendment No. _____

(to be filled in by Principal Clerk)

Rep.)
) Hoyle
Sen.)

moves to amend the bill on page 1, line 21,

by adding [illegible] CIVIL TOKAI

"[illegible] FOR CONSTRUCTION [illegible]

~~Section 2.~~ For purposes of this section, resale at cost by a real estate trade association, or Multiple Listing Service operated by a real estate trade association shall not constitute a resale or use of the data for trade or commercial purposes."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 499
Proposed Committee Substitute H499-PCS4121

Short Title: GIS Record Exception. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO THE USE OF GEOGRAPHICAL INFORMATION SYSTEM DATABASE INFORMATION BY REAL ESTATE TRADE ASSOCIATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 132-10 reads as rewritten:

"**§ 132-10. Qualified exception for geographical information systems.**

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news ~~media~~ media, real estate trade associations, or Multiple Listing Services operated by real estate trade associations shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose. For purposes of this section, resale at cost by a real estate trade association or Multiple Listing Services operated by a

real estate trade association shall not constitute a resale or use of the data for trade or commercial purposes."

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

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May 27, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **HOUSE BILL 499 - GIS RECORD EXEMPTION** - Representative Thompson

House Bill 499 would add another exemption to the general prohibition against reselling or otherwise using for trade or commercial purposes, geographical information developed by counties and cities, to allow resale of this data by real estate trade associations and multiple listing services.

G.S. 132-10 was added to the public records law in 1995. This statute makes the geographic information systems databases and data files developed and operated by counties and cities public records and requires that the public have access to public terminals to retrieve the information contained in these databases. Under this statute when a person requests an electronic copy of the database the person must agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. The statute makes an exception from this requirement that publication or broadcast by the news media does not constitute resale, trade or commercial use. The statute also currently makes clear that use of the data by a licensed professional in the course of practicing the professional's profession is not use for a commercial purpose.

This bill adds real estate trade associations and multiple listing services to the news media as entities that may resale this information.

The bill would become effective when it becomes law.

H499-SMRU-002

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 871

Short Title: Wage & Hour Act Amendments. (Public)

Sponsors: Representatives Berry; Adams, Alexander, Arnold, Baddour, Buchanan, Cansler, Easterling, Goodwin, Hensley, Howard, Insko, Jeffus, Luebke, McCrary, Moore, Mosley, Owens, Ramsey, Saunders, Smith, and G. Wilson.

Referred to: Commerce.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE WAGE AND HOUR ACT TO RAISE THE STATE MINIMUM WAGE, TO PERMIT EMPLOYERS SUBJECT TO THE STATE MINIMUM WAGE TO TAKE THE SAME TIP CREDIT AS FEDERALLY COVERED EMPLOYERS, AND TO EXEMPT COMPUTER PROFESSIONALS FROM MINIMUM WAGE AND OVERTIME PROVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.3 reads as rewritten:

"**§ 95-25.3. Minimum wage.**

(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least ~~three dollars and eighty cents ($3.80) per hour effective January 1, 1992, and four dollars and twenty-five cents ($4.25) per hour effective January 1, 1993,~~ the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time, except as otherwise provided in this section.

(b) In order to prevent curtailment of opportunities for employment, the wage rate for full-time students, learners, apprentices, and messengers, as defined under the Fair Labor Standards Act, shall be ninety percent (90%) of the rate in effect under subsection (a) above, rounded to the lowest nickel.

(c) The Commissioner, in order to prevent curtailment of opportunities for employment, may, by regulation, establish a wage rate less than the wage rate in

effect under section (a) which may apply to persons whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, as such persons are defined under the Fair Labor Standards Act.

(d) The Commissioner, in order to prevent curtailment of opportunities for employment of the economically disadvantaged and the unemployed, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to all persons (i) who have been unemployed for at least 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are, receiving ~~aid to families with dependent children provided under Part A of Title IV of the Social Security Act,~~ Work First Family Assistance, or who are receiving supplemental security benefits under Title XVI of the Social Security Act.

Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for such subminimum wage shall be issued by the Employment Security Commission.

The regulation issued by the Commissioner shall not permit employment at the subminimum rate for a period in excess of 52 weeks.

(e) The Commissioner, in order to prevent curtailment of opportunities for employment, and to not adversely affect the viability of seasonal establishments, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to any employee employed by an establishment which is a seasonal amusement or recreational establishment, or a seasonal food service establishment.

(f) Tips earned by a tipped employee may be counted as wages only up to ~~fifty percent (50%) of the applicable minimum wage for each hour worked~~ the amount permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped employee is notified in advance, is permitted to retain all tips and the employer maintains accurate and complete records of tips received by each employee as such tips are certified by the employee monthly or for each pay period. Even if the employee refuses to certify tips accurately, tips may still be counted as wages when the employer complies with the other requirements of this section and can demonstrate by monitoring tips that the employee regularly receives tips in the amount for which the credit is taken. Tip pooling shall also be permissible among employees who customarily and regularly receive tips; however, no employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling arrangement.

(g) In order to prevent curtailment of opportunities for employment, an employer may, in lieu of the minimum wage prescribed by this section, pay a training wage to eligible persons in accordance with G.S. 95-25.3A."

Section 2. G.S. 95-25.14(b) reads as rewritten:

"(b) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to these exemptions, do not apply to:

(1) Any employee of a boys' or girls' summer camp or of a seasonal religious or nonprofit educational conference center;

(2) Any person employed in the catching, processing or first sale of seafood, as defined under the Fair Labor Standards Act;

(3) The spouse, child, or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina;

(4) Any person employed in a bona fide executive, administrative, professional or outside sales capacity, as defined under the Fair Labor Standards Act;

(5) Repealed by Session Laws 1989, c. 687, s. 2.

(6) Any person while participating in a ridesharing arrangement as defined in ~~G.S. 136-44.21.~~ G.S. 136-44.21;

(7) Any person who is employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, as defined in the Fair Labor Standards Act."

Section 3. This act becomes effective August 1, 1997.

North Carolina General Assembly
Legislative Services Office

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May 27, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: House Bill 871 (Wage and Hour Act Amendments)

House Bill 871 ties the State minimum wage to the federal minimum wage so that whenever Congress increases the federal minimum wage, the State minimum wage will also increase to the same amount. The federal minimum wage is currently $4.75 per hour and will increase to $5.15 per hour on September 1st of this year (29 USCS §206(a)). The State minimum wage is currently $4.25.

The bill also makes other changes that will conform certain State wage law to the federal minimum wage law, as follows:

* Current law allows an employer whose employees receive tips to allow the tips to count for up to 50% of the wages of the employees for purposes of complying with the minimum wage law. The proposed change in the bill will tie the "tip credit" to the federal law. The federal law, as amended last year by Congress, allows employers to count increasingly more of the tips towards the minimum wage (29 USCS §203(m)).

* Certain computer professionals (computer systems analysts, computer programmers, software engineers, and similar workers) are exempted from the State minimum wage and overtime law. Those meeting the federal standard were exempted by Congress from the federal minimum wage and overtime law last year (29 USCS §213(a)(17)).

This bill would take effect August 1, 1997.

H871-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

The problem that the Department of Labor is having and hence the need for the bill:

If a small mom and pop business in North Carolina thinks that they should be paying the state minimum wage to their employees and one of the employees calls the Department of Labor to complain that they aren't making the proper minimum wage.

The Department will open an investigation to determine if the small business should be paying the state or the federal minimum wage. Indeed if the department finds that the small business should be paying the federal minimum wage rather than the state minimum wage, the department would refer the case to the U.S. Department of Labor.

The U.S. Department of Labor takes minimum wage cases very seriously and they would begin their own investigation. If the investigation determines that the small business should be paying the federal minimum wage rather than the state minimum wage, U.S. DOL would make the small business pay back wages to all employees who were not paid correctly plus triple the monetary award as a penalty/fine. Again, this assessment would be to all employees who were not adequately paid the appropriate minimum wage, not just the one who filed the complaint.

Therefore, to allow the state minimum wage to track the federal minimum wage makes great sense. It keeps one set of rules for everybody to operate under without fear of being penalized by the U.S. Department of Labor.

The House passed this bill 113-4.

The North Carolina Restaurant Association supports this bill.

The National Computer Professionals Association support this bill.

The North Carolina AFL-CIO supports this bill.

The Department of Labor supports this bill.

There is no known opposition to this bill. Rep. Berry has talked with NCCBI and other business groups and they have no position on this bill.

Prepared by
Dana S. Cope
N.C. Department of Labor

Matching the Minimum Wage

Who Gets Paid the State Minimum Wage?

-- Only approximately 30,000 or fewer employees (of NC's estimated 3.5 million employees) are covered by the state rather than the federal minimum wage.

-- That is about 1% or less of the North Carolina non-supervisory workforce.

-- Having the state automatically track the federal minimum wage will eliminate the delay which has typically resulted when Congress raises the wage while the General Assembly is out of session.

-- At least 20 other states have recognized this inconsistency, and have passed laws requiring their states' minimum wages to track the federal minimum wage.

Why or Why Not? (Salt and Mustard)

-- Because if an employee's work requires her to be engaged in interstate commerce or the production of goods for interstate commerce, then that employee must be paid the federal minimum wage.

-- Because if that employee places an interstate phone call or sends a facsimile across state lines, ***she is considered to be engaging in interstate commerce.***

-- Consider the employee who works at a Mom & Pop toy store, and who must process credit card transactions. Should he be paid under the state or federal minimum wage? *(Federal -- Credit cards are interstate transactions.)*

-- Some of these employees could be college students who work in food service. They may also unload the supply truck once a week. *(On the days they unload salt from Utah and mustard from Pennsylvannia, they are engaging in interstate commerce and should be paid according to the federal minimum wage. On the days they only wait tables, they should be paid according to the state law.)*

Tracking the Minimum Wage

-- Even though the first federal minimum wage was established in 1938 at 25 cents, North Carolina did not institute its first minimum wage for another 22 years.

-- Over the years, it has been common to see the state minimum wage lag behind the federal wage for one to two years. This is because, sometimes, the federal wage is raised when North Carolina's General Assembly is not in session.

-- At least twice in the state's history, the lag between the state and federal wages grew even longer:

It took NC from 1956 to 1966 to meet the federal wage of $1.00.
It took NC from 1968 to 1972 to meet the federal wage of $1.60.

-- The last increase in the NC wage came in 1993, up from $3.80 to $4.25 per hour, while the federal wage increased in 1996 to $4.75 and is slated to go to $5.15 on September 1, 1997.

Exemptions to the NC Minimum Wage Law

1. Any person engaged in interstate commerce
2. Any person employed in agriculture
3. Any person employed as a domestic, including babysitters and companions
4. Any person employed as a page in the General Assembly or in the Governor's Office
5. Bona fide volunteers in medical, educational, religious or nonprofit organizations
6. Persons confined in and working for any penal, correctional or mental institution of the State or local government
7. Any person employed as a model, or as an actor or performer in motion pictures or theatrical, radio or television productions
8. Any person employed by an outdoor drama in a production role, including lighting, costumes, properties and special effects; but this exemptions does not include such positions as office workers, ticket takers, ushers and parking lot attendants
9. Any employee of a boys' or girls' summer camp or of a seasonal religious or non-profit educational conference center
10. Any person employed in the catching, processing or first sale of seafood
11. The spouse, child, or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina
12. Any person employed in a bona fide* executive, administrative, professional or outside sales capacity
13. Any person while participating in a ridesharing arrangement
14. Any person who is employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker*

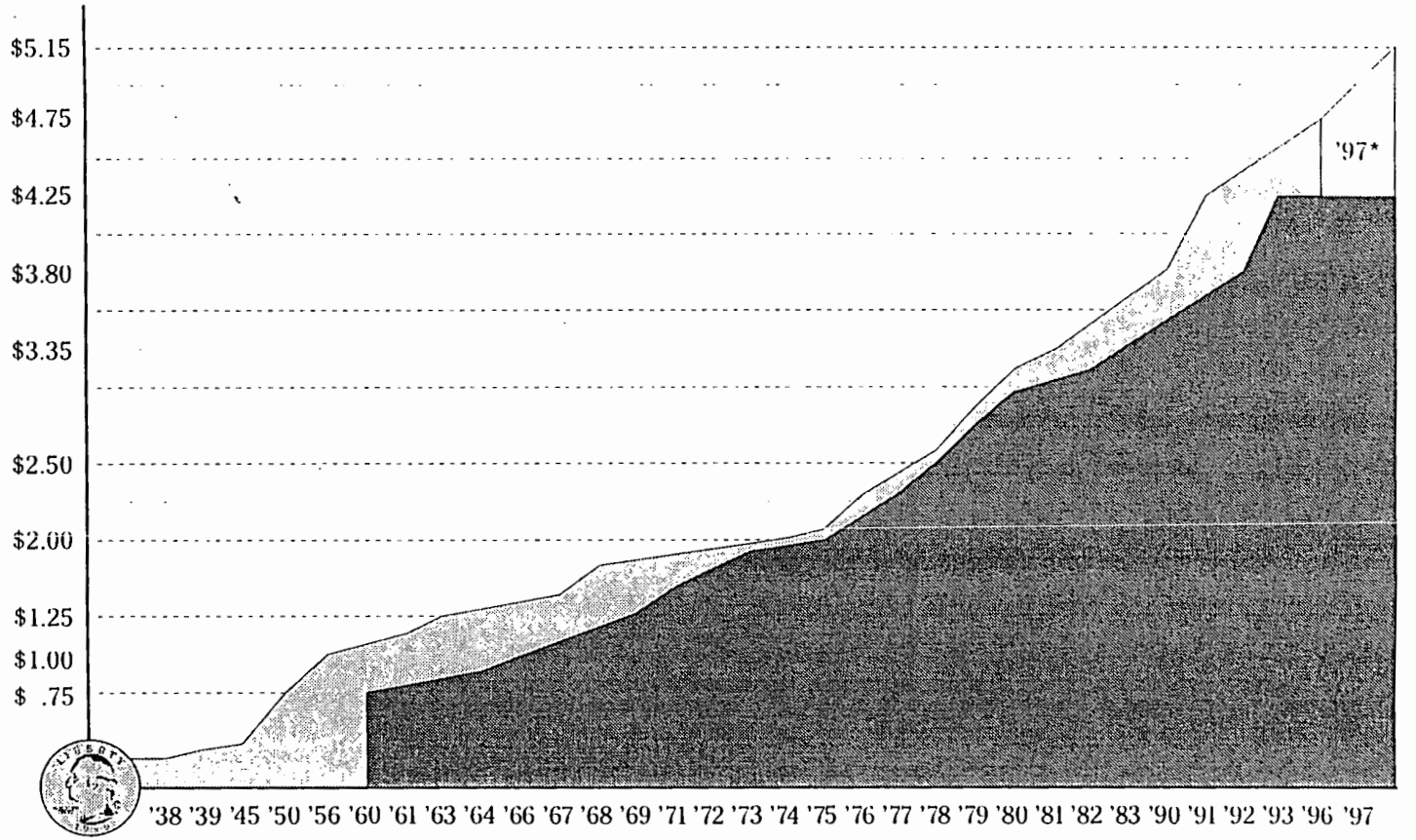
*Must meet salary requirement

<u>Notes</u>:

The exemptions listed above will remain unchanged under state law with the enactment of a bill which enables the state minimum wage to track the federal minimum wage.

A report from the US Department of Labor in 1985 estimated that approximately 87% of the non-supervisory workforce was subject to the federal minimum wage. In 1989, Congress repealed the single largest remaining exemption of non-supervisory employees, that of employees who work in the retail trades. As a consequence, it is believed that very few non-supervisory employees are not currently subject to the federal minimum wage.

History of the Minimum Wage
(Federal and State Wages)



* Proposed

Federal

State

REPRESENTATIVE CHERIE KILLIAN BERRY

N. C. General Assembly
State Legislative Building
Phone 919-733-5861
Fax 919-733-2599

Press Conference

Contact: Betty U. Smith Phone: (919) 733-5861
cherieb.ncga.state.nc.us

NORTH CAROLINA WAGE AND HOUR ACT AMENDMENTS

A Press Conference will be held tomorrow morning (April 3,1997)at 11am in the Press Conference Room.

Representative Cherie K. Berry and Commissioner of Labor Harry Payne will be present to discuss a bill that will be introduced by Representative Berry Thursday at session. The proposed bill to amend the ***North Carolina Wage and Hour Act*** raises the ***North Carolina*** minimum wage to the same level as required by federal law and thereafter tracks any increases in the federal minimum wage. It also amends the North Carolina Wage and Hour Act to incorporate two other changes made in 1996 to the Fair Labor Standards Act, creating an exemption from minimum wage and overtime requirements for "computer professionals" and authorizing employers to take a larger credit for tips towards satisfying the minimum wage requirement.

~ MORE ~

Congress raised the federal minimum wage in 1996 from $4.25 per hour to $4.75 per hour and provided for a second raise to $5.15 per hour to take effect on September 1, 1997. The North Carolina minimum wage remains at $4.25 per hour, where it has been since January 1, 1993.

An increase in the minimum wage is an integral part of making welfare reform work. Without an increase in the minimum wage, many former welfare recipients will be stuck in jobs which do not provide their families with a living wage. Even with this increase, families with a minimum wage earner as the primary provider will likely continue to need other assistance or resources to make ends meet.

WASHINGTON DAILY NEWS, WEDNESDAY, APRIL 30, 1997

Senate approves minimum-wage plan

Associated Press

RALEIGH — The state House has unanimously approved a bill requiring an increase in North Carolina's minimum wage every time the federal minimum wage rises.

House members voted 113-0 Tuesday to approve the measure.

Currently, some 30,000 North Carolina workers are left behind every time the federal minimum wage is increased and must wait until the legislature increases the state minimum wage.

North Carolina last raised the state minimum wage in 1993, from $3.80 to $4.25 an hour. The federal minimum wage rose to $4.75 last year and is scheduled to go to $5.15 an hour in September.

The state minimum wage applies only to workers who are not in management and not involved in interstate commerce. That means, for example, that a restaurant waiter is covered by the federal minimum wage on days that he helps unload interstate shipments of food, but by the state minimum wage on days when he just waits tables.

"It's very confusing for employers. It's hard to determine who exactly is covered by the North Carolina minimum wage," said bill sponsor Rep. Cherie Berry, R-Catawba.

Rep. Chuck Neely, R-Wake, said a mimimum wage makes unskilled workers too expensive to hire, but he supported the bill because it makes record-keeping easier for businesses.

"It took President Nixon to open China and it took Rep. Berry to convince me to vote for the minimum wage," Neely said.

About 30,000 North Carolina workers, less than 1 percent of the total labor force, rely on the state minimum wage as their base salary, according to the state Labor Department.

DAILY REFLECTOR
GREENVILLE, N. C.

APR 04 97

Bill would link N.C. minimum wage to the federal increases

RALEIGH (AP) — North Carolina's minimum wage would be linked to the federal minimum wage under a bill filed Thursday in the state House.

"Common sense says that whenever you work and wherever you work in North Carolina, you should be subject to the same minimum wage," state Labor Commissioner Harry Payne said at a news conference. "It's just not smart and it's also not fair (to have separate state and federal minimum wages).

The state minimum wage applies only to workers who are not in management and are not covered by the federal law.

Labor Department officials say about 30,000 employees, less than 1 percent of the total state workforce, rely on the state minimum wage as their base salary.

Federal law covers any employees who work in interstate commerce. So a restaurant waiter who occasionally helps unload supply trucks would be covered by the federal minimum wage on days when he unloads interstate shipments of food and by the state minimum wage on days when he just waits tables.

Retail employees generally are covered by federal minimum wage because credit card transactions are interstate commerce.

North Carolina last raised the state minimum wage in 1993, from $3.80 to $4.25 an hour. The federal minimum wage rose to $4.75 last year and is scheduled to go to $5.15 an hour in September.

The state traditionally has lagged behind the federal government by several years in raising the minimum wage.

Congress enacted the first minimum wage in 1938, but North Carolina did not pass a state minimum wage law until 1960. It took the state from 1956 to 1966 to meet the federal minimum wage of $1 an hour.

TELEGRAM
ROCKY MOUNT, N. C.
APR 4 97

State minimum wage may soon mirror federal

RALEIGH (AP) — North Carolina's state minimum wage would rise automatically with increases in the federal minimum wage under a bill filed in the state House.

"Common sense says that whenever you work and wherever you work in North Carolina, you should be subject to the same minimum wage," state Labor Commissioner Harry Payne said at a news conference Thursday. "It's just not smart and it's also not fair" to have separate state and federal minimum wages.

The state minimum wage applies only to workers who are not in management and are not covered by the federal law.

Labor Department officials say about 30,000 employees, less than 1 percent of the total state workforce, rely on the state minimum wage as their base salary.

Federal law covers any employees who work in interstate commerce. So a restaurant waiter who occasionally helps unload supply trucks would be covered by the federal minimum wage on days when he unloads interstate shipments of food and by the state minimum wage on days when he just waits tables.

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COURIER TIMES
ROXBORO, N. C.

APR 09 97

Bill would link state minimum wage to federal minimum

By DENNIS PATTERSON
The Associated Press

RALEIGH (AP) — North Carolina's state minimum wage would rise automatically with increases in the federal minimum wage under a bill filed in the state House.

"Common sense says that whenever you work and wherever you work in North Carolina, you should be subject to the same minimum wage," state Labor Commissioner Harry Payne said at a news conference lst week. "It's just not smart and it's also not fair" to have separate state and federal minimum wages.

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Congress enacted the first minimum wage in 1938, but North Carolina did not pass a state minimum wage law until 1960. It took the state from 1956 to 1966 to meet the federal minimum wage of $1 an hour.

Under the bill, filed by Rep. Cherie Berry, R-Catawba, the state minimum wage would rise whenever the federal wage does.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 891
Second Edition Engrossed 4/24/97
House Committee Substitute Favorable 5/7/97

Short Title: Local Government Contracting. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO UPDATE AND REVISE THE LAWS AFFECTING LOCAL GOVERNMENT CONTRACTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129(a) reads as rewritten:

"(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars ($100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ~~twenty thousand dollars ($20,000),~~ thirty thousand dollars ($30,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of

gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any municipality, county, or other political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager or the chief purchasing official the authority to award contracts, reject bids, readvertise to receive bids on behalf of the unit, or waive bid bonds or deposits, or performance and payment bond requirements. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body."

Section 2. G.S. 143-129(b) reads as rewritten:

"(b) Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission,

council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. In the case of proposals ~~in an estimated amount of less than one hundred thousand dollars ($100,000)~~ for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.

Bids shall be sealed ~~if the invitation to bid so specifies and, in any event,~~ and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor."

Section 3. G.S. 143-129(f) reads as rewritten:

"(f) The provisions of this Article shall not apply to purchases of apparatus, supplies, materials, or equipment ~~by hospitals~~ when performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding ~~consideration;~~ consideration. Notwithstanding any other provision of this section, the governing board of a municipality, county, or other subdivision of the State shall approve purchases made under this exception prior to the award of the contract. In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when a particular medical item or prosthetic appliance is needed; when a particular product is ordered by an attending physician for his patients; when additional products are needed to complete an ongoing job or task; when products are purchased for 'over-the-counter' resale; when a particular product is needed or desired for experimental, developmental, or research work; or when equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines

that the equipment should be purchased. The governing body of a ~~hospital~~ hospital, municipality, county or other political subdivision of the State shall keep a record of all purchases made pursuant to this exception. These records are subject to public inspection."

Section 4. G.S. 143-129 is amended by adding a new subsection to read:

"(g) When the governing board of any municipality, county, or other subdivision of the State, or the manager or purchasing official delegated authority under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

(1) The United States of America or any federal agency;

(2) The State of North Carolina or any agency or political subdivision of the State; or

(3) Any other state or any agency or political subdivision of that state,

if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing municipality, county, or other political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice, in a newspaper of general circulation in the area served by the governing body, that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts."

Section 5. G.S. 143-131 reads as rewritten:

"**§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.**

All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of five thousand dollars ($5,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection ~~at any time.~~ until the contract has been awarded."

Section 6. G.S. 160A-266 reads as rewritten:

"**§ 160A-266. Methods of sale; limitation.**

(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

(1) Private negotiation and sale;
(2) Advertisement for sealed bids;
(3) Negotiated offer, advertisement, and upset bid;
(4) Public auction; or
(5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than ~~ten thousand dollars ($10,000)~~ thirty thousand dollars ($30,000) for any one item or group of similar items. Real ~~property~~ property, of any value, and personal property valued at ~~ten thousand dollars ($10,000)~~ thirty thousand dollars ($30,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and G.S. 160A-279.

Provided, however, a city may dispose of real property of any value and personal property valued at ~~ten thousand dollars ($10,000)~~ thirty thousand dollars ($30,000) or more for any one item or group of similar items by private negotiation and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than ~~five hundred dollars ($500.00)~~ five thousand dollars ($5,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than ~~five hundred dollars ($500.00)~~ five thousand dollars ($5,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official

authorized under this section to dispose of property ~~shall, on the first day of February, report in writing to the council on any property disposed of under such authorization from July 1 through December 31 of the previous year, and shall on the first day of August report in writing to the council on any property disposed of under such authorization from January 1 through June 30 of that year. The written report~~ shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or ~~exchange since the last such report was submitted.~~ exchange."

Section 7. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-129.7. Purchase with trade-in of apparatus, supplies, materials, and equipment.**

Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes, municipalities, counties, and other political subdivisions of the State may include in specifications for the purchase of apparatus, supplies, materials, or equipment an opportunity for bidders to purchase as 'trade-in' specified personal property owned by the municipality, county, or other political subdivision, and the awarding authority may award a contract for both the purchase of the apparatus, supplies, materials, or equipment and the sale of trade-in property, taking into consideration the amount offered on the trade-in when applying the criteria for award established in this Article."

Section 8. This act raises the threshold amount in G.S. 143-129 and G.S. 160A-266. If any local act provides a threshold amount for the subjects addressed in these statutes that is less than the amount provided in this act, this act prevails to the extent of that conflict.

Section 9. This act becomes effective July 1, 1997.

VISITOR REGISTRATION SHEET

Commerce — 5-27-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
R. Paul Williams	NCHBA
Jim	NC Realtors Assoc
[illegible]	[illegible]
Joe McNeely	Raleigh
Mary Carol Lewis	IH's
Hugh Schmidt	IH's
Jim Blackburn	NC Assoc. of County Commissioners
David Simmons	Zeb Alley, PA
Amy Turburville	Hunton & Williams
Chris Scott	NC AFL-CIO
Jim LORE	LORE & McCLURE
[illegible]	NAPHCW
Rob Schofield	NCLCPC
George Reed	NC Council of Churches
Jean Rogers	HPAssoc
Andy Ellis	NCFB
Julian Philpott	NCFB
James ANDREWS	NC State AFL-CIO
Floyd Lewis	General Statutes Commission
Jim Ramsey	NC ANA
Hubert Poper	ZDA, PA
BILL SCOGGIN	NCBA

VISITOR REGISTRATION SHEET

Commerce — May 27, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Adam Searing	NCIIAC
Henry Patterson	Attorney
Walt Taylor	NCAFL

MINUTES
SENATE COMMERCE COMMITTEE
June 3, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building on Tuesday, June 3, 1997, at 11:00 a.m. Eighteen members of the Committee were present.

Senator Soles, Chairman, called the meeting to order.

The following bills were considered by the Committee:

HB 134, AN ACT TO ENACT THE REVISED ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AND MISCELLANEOUS AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Representative Culpepper, the bill sponsor, said the legislation was recommended by the General Statutes Commission; it was adopted by the National Conference of Commissioners on Uniform State Laws in 1994, has been enacted in 32 states, the District of Columbia and Puerto Rico, and is pending this year in 6 other states. He said it updates Article 8 of the Uniform Commercial Code to provide a modern legal structure for a system of holding securities through brokers, banks and other securities intermediaries. (See attached memorandum from the General Statutes Commission for additional information.)

Professor Donald Clifford with the UNC School of Law and Ms. Doris Bray, Vice-Chairman of the General Statues Commission, assisted in answering questions from the Committee.

Senator Hoyle moved that House Bill 134 be given a favorable report. Motion carried.

HB 482, AN ACT TO ALLOW ALL HANDICAPPED PERSONS TO USE A REGISTERED SIGNATURE FACSIMILE AS A MARK OF THEIR LEGAL SIGNATURE.

Representative Culp, the bill sponsor, said present law only applies to visually handicapped people and the bill extends the same benefit to all handicapped people. An example of the signature facsimile must be registered with the clerk of the superior court in the county where the person lives. (See attached memorandum from Committee Counsel for additional information.)

Senator Rand moved that House Bill 482 be given a favorable report. Motion carried.

HB 485, AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE PRACTICE OF FUNERAL SERVICE, CREMATIONS, AND FUNERAL AND BURIAL TRUST FUNDS.

Representative Dockham, the bill sponsor, could not be present for the meeting but asked that it be taken up with the staff providing the explanation. Steven Rose, Committee Counsel, provided the attached memorandum explaining each section of the bill.

Mr. William R. Hoke, the attorney for the State Licensing Board for Mortuary Science, said the amendments were technical in nature and had been approved by the Board.

Senator Jordan moved to give House Bill 485 a favorable report. Motion carried.

HB 1075, AN ACT TO PERMIT LENDERS TO CONTRACT FOR AND RECEIVE SHARED APPRECIATION IN CERTAIN CIRCUMSTANCES.

Representative Hall, sponsor of the bill, said the bill would allow lenders to contract for and receive shared appreciation or equity if the amount does not exceed 10 per cent of the value of the property at the time of the loan repayment, the loan involved is outstanding 24 months or longer, and the reverse mortgage is guaranteed or insured by the federal government or originated under a program approved by specified federal mortgage entitles. The bill also requires that mandated counseling be provided by a state certified reverse mortgage counselor. (See attached memorandum from Committee Counsel for additional information.)

Ms. Theresa Tilley, Coordinator of Reverse Mortgages with Centura Bank, and Mr. Jon G. Gauthier, Director of the Charlotte Partnership Office of FannieMae, and Mr. Paul Stock with the North Carolina Bankers Assn., assisted Mr. Hall in answering questions from the Committee.

Senator Lee moved that House Bill 1075 be placed in subcommittee for further study. Motion carried. The Chairman named the following to the Subcommittee:

Senator Lee, Chairman
Senator Dalton
Senator Kerr
Senator Ledbetter.

HB 994, AN ACT TO ALLOW PAY TELEPHONE PROVIDERS TO OBTAIN LINE ACCESS FROM COMPETITIVE LOCAL PROVIDERS OF TELEPHONE SERVICE AND TO ELIMINATE THE STATUTORY REQUIREMENT THAT LINE ACCESS RATES BE SET ON A MEASURED RATE BASIS.

Senator Hoyle said the legislation simply continues the deregulation of local telephone service enacted last session. It authorizes the pay telephone to be connected to any authorized local exchange provider and eliminates the requirement that the service be on a measured usage rate basis if possible. (See attached memorandum from Committee Counsel for additional information.)

Senator Rand moved that HB 994 be given a favorable report. Motion carried.

The meeting adjourned at 12 Noon.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, June 03, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.	**134**	Investment Securities UCC Rewrite.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**482**	Handicapped Persons Signature.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS)	**485**	Funeral Establishments/AB/	
		Sequential Referral:	Finance
		Recommended Referral:	None
H.B.	**994**	Competitive Pay Telephone.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 4

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 134*

Short Title: Investment Securities UCC Rewrite. (Public)

Sponsors: Representatives Culpepper; and Starnes.

Referred to: Judiciary II.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE REVISED ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AND MISCELLANEOUS AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 25 of the General Statutes is rewritten to read:

"ARTICLE 8.

"Investment Securities.

"PART 1.

"SHORT TITLE AND GENERAL MATTERS.

"**§ 25-8-101. Short title.**

This Article may be cited as Uniform Commercial Code-- Investment Securities.

"**§ 25-8-102. Definitions.**

(a) In this Article:

(1) 'Adverse claim' means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of

the claimant for another person to hold, transfer, or deal with the financial asset.

(2) 'Bearer form', as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) 'Broker' means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) 'Certificated security' means a security that is represented by a certificate.

(5) 'Clearing corporation' means:

(i) A person that is registered as a 'clearing agency' under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) 'Communicate' means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) 'Entitlement holder' means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of G.S. 25-8-501(b)(2) or (3), that person is the entitlement holder.

(8) 'Entitlement order' means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) 'Financial asset', except as otherwise provided in G.S. 25-8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: Senate Commerce Committee

FROM: General Statutes Commission

DATE: May 16, 1997

RE: **House Bill 134 (Investment Securities UCC Rewrite)**

General Comments

House Bill 134 enacts Revised Article 8 of the Uniform Commercial Code (Investment Securities) which updates current Article 8 to provide a modern legal structure for a system of holding securities through brokers, banks, and other securities intermediaries ("indirect holding system"). The bill also enacts conforming and miscellaneous amendments to Articles 1 (General Provisions), 4 (Bank Deposits and Collections), 5 (Letters of Credit), 9 (Secured Transactions; Sales of Accounts and Chattel Paper), and 10 (Effective Date and Repealer) of the Uniform Commercial Code and other sections of the General Statutes. Revised Article 8, which was adopted by the National Conference of Commissioners on Uniform State Laws in 1994, has been enacted in 32 states, the District of Columbia, and Puerto Rico, and is pending this year in 6 other states.

The General Statutes Commission circulated to its mailing list the proposal to enact Revised Article 8 and received no negative comments. Revised Article 8 is supported by the North Carolina Bar Association and other bodies. The Commission is not aware of any opposition to the enactment of Revised Article 8.

Current Article 8 deals with what is now called the "direct holding system" where the purchaser of securities has a direct relationship with the issuer of the securities and security transfers require physical delivery of indorsed certificates representing the securities. This direct relationship between the purchaser and the issuer worked reasonably well until the late 1960s, but with the development of automation and electronic systems of transfer, the securities industry became unable to process the paper resulting from the increased volume of securities transfers. In 1989 the General Assembly amended current Article 8 to enact the 1977 amendments adopted

by the National Conference of Commissioners on Uniform State Laws to allow issuers the option of issuing securities without certificates ("uncertificated securities"). Transfers of uncertificated securities are registered on the books of the issuer of those securities.

Uncertificated securities never caught on. Wall Street solved the paperwork crunch by creating the indirect holding system, under which the customer does not take possession of the security, but has an account with a broker that credits the customer with "ownership" of the security. The broker in turn has an account with a depository institution, mainly The Depository Trust Corporation in New York, which credits the broker's "ownership" of the security. The Depository Trust Corporation in turn holds legal title to the security (probably through a nominee such as "Cede & Co.") as part of a "jumbo" stock certificate which consolidates the holdings of all the broker and trust and pension accounts. The Depository Trust Corporation or its nominee, Cede & Co., is then registered as a single, very large shareholder on the books of the issuer.

Revised Article 8 defines the nature of the property interest of the customer and sets forth the rights and duties of the participants in the indirect holding system. It also retains the basic conceptual structure and provisions of current Article 8 relating to the direct holding of certificated and uncertificated securities, while eliminating ambiguities and inconsistencies that have been found in the Article.

Specific Comments

Section 1. This section amends Chapter 25 of the General Statutes to enact Revised Article 8 of the Uniform Commercial Code, entitled "Investment Securities." Part 1 of the Article sets forth definitions and other statutory provisions that apply to both direct and indirect holdings. Parts 2, 3, and 4 of the Article deal only with direct holdings in much the same way as in current Article 8. Part 5, which provides legal principles for the acquisition and transfer of rights through the indirect holding system, contains the most important innovations of Revised Article 8.

Part 1 (Short Title and General Matters), in addition to defining several new terms, contains key provisions relating to direct and indirect holdings. The Part includes provisions:

(1) listing ways in which interests in securities, financial assets, or securities entitlements may be acquired;

(2) specifying when a person has notice of an adverse claim to a security or security entitlement;

(3) describing how a purchaser can take control of a financial asset, thereby placing itself in a position where it can have the securities sold, without further action by the owner;

(4) describing the warranties given within the direct holding system by a transferor and

by a person who originates an entitlement order to a securities intermediary;

(5) describing the means by which a creditor may reach a debtor's interest in a certificated security, uncertificated security, or security entitlement to satisfy any claims;

(6) abolishing the statutory requirement that a contract for sale or purchase of a security be in writing; and

(7) ensuring that securities intermediaries will not risk liability to third parties when they act on the instructions of their customers.

Part 2 (Issue and Issuer), which is mainly unchanged from current Article 8, deals with the relationship between issuers of securities and securities holders. The Part contains provisions governing an issuer's obligations when registering and transferring securities on its books and the extent to which an issuer can assert defenses against purchasers of its securities.

Part 3 (Transfer of Certificated and Uncertificated Securities) mainly reorganizes and clarifies the provisions of current Article 8 that relate to interests in securities acquired, held, transferred, or pledged directly by actual possession of security certificates or record ownership on the books of issuers. The few provisions of Part 3 of current Article 8 governing interests in securities acquired, held, transferred, and pledged through securities intermediaries have been moved to new Part 5 of Revised Article 8 and substantially clarified and supplemented.

Part 4 (Registration), which mainly retains the structure and legal principles of current Article 8, deals with the process for registering transfers of securities by the issuer under the direct holding system.

Part 5 (Security Entitlements) contains the provisions for the indirect holding system. The Part contains provisions governing the rights, obligations, duties, and liabilities of persons who deal in and hold securities and other financial assets indirectly through brokers and other securities intermediaries. These provisions also set forth the law governing the relationships among securities intermediaries, their customers, and their respective lenders. Under Part 5, the interest in the property held by, and the package of personal rights against, a securities intermediary is called a "security entitlement." A person identified in the records of a securities intermediary as the person having a security entitlement against the security intermediary is called an "entitlement holder."

Sections 2 through 16. These sections enact conforming and miscellaneous amendments to Article 9. The amendments gather in one place specific provisions governing the attachment, perfection, and priority of security interests in all types of investment property, including certificated securities, uncertificated securities, security entitlements, securities accounts, commodity contracts, and commodity accounts. New Sections G.S. 25-9-115 (Investment

Property) and G.S. 25-9-116 (Security Interest Arising In Purchase Or Delivery Of Financial Assets) are added for the purpose of permitting the creation of a security interest in financial assets held in the indirect holding system.

Sections 17 through 20. These sections update statutory references and language in other sections of the Uniform Commercial Code to reflect the appropriate references and language of Revised Article 8.

Section 21. This section makes a conforming amendment to Article 10.

Sections 22 through 27. These sections make conforming amendments to other section of the General Statutes. Specifically, Sections 22 and 24 through 27 update statutory references to reflect the appropriate references to Revised Article 8, and Section 23 repeals the Uniform Act for Simplification of Fiduciary Security Transfers which will no longer be necessary if Revised Article 8 is enacted.

Section 28. This section authorizes the printing of official and drafters' comments.

Section 29. This section contains transition provisions and provides that the act is to become effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 482

Short Title: Handicapped Persons Signature. (Public)

Sponsors: Representatives Culp; Barbee, Clary, Decker, Dickson, Jeffus, Kiser, McComas, Preston, Reynolds, Rogers, Russell, Sexton, Sherrill, Shubert, Sutton, Watson, Weatherly, Wood, and Yongue.

Referred to: Judiciary I.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALL HANDICAPPED PERSONS TO USE A REGISTERED SIGNATURE FACSIMILE AS A MARK OF THEIR LEGAL SIGNATURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 22A-1 reads as rewritten:

"**§ 22A-1. Use of a signature facsimile by a ~~visually~~ handicapped person.**

A ~~visually~~ handicapped person, as defined in ~~G.S. 111-11~~ G.S. 168A-3(4), may use a registered signature facsimile as a proper mark of ~~his~~ the person's legal signature. An example of the signature facsimile shall be registered by the ~~visually~~ handicapped person with the clerk of the superior court in the county ~~of his domicile.~~ where the person lives. The registered signature facsimile may be revoked at any time in writing by the ~~visually~~ handicapped person."

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

North Carolina General Assembly
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June 2, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 482 - Handicapped Persons Signature. (Rep. Culp)**

House Bill 482 amends the law to allow all handicapped persons to use a registered signature facsimile as a mark of their legal signature. An example of the signature facsimile must be registered with the clerk of the superior court in the county where the person lives. The registered signature facsimile may be revoked at any time in writing by the handicapped person. Under current law, only *visually* handicapped persons may use a registered signature facsimile. This bill extends the same benefit to all handicapped people.

This act becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 485
Committee Substitute Favorable 4/14/97
Committee Substitute #2 Favorable 4/23/97

Short Title: Funeral Establishments/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE PRACTICE OF FUNERAL SERVICE, CREMATIONS, AND FUNERAL AND BURIAL TRUST FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.20(e1) reads as rewritten:

"(e1) 'Funeral chapel' means a chapel or other facility separate from the funeral establishment premises for the reposing of dead human bodies, visitation or funeral ceremony, which is owned, operated, or maintained by a funeral ~~establishment,~~ establishment or other licensee under this Article, and which does not use the word 'funeral' in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed or offered for sale any caskets or other funeral merchandise; in which or on the premises of which there is not located any funeral business office or a preparation room; in which or on the premises of which no funeral sales, financing, or arrangements are made; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment."

Section 2. G.S. 90-210.23(d) reads as rewritten:

"(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which ~~he~~ the person is a licensee or resident ~~trainee, and every~~ trainee. Every funeral service establishment and its records and every place of

business where the practice of funeral service or embalming is carried on and its records ~~thereof~~ shall be subject to inspection by the Board during normal hours of operation and periods shortly before or after normal hours of operation and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident ~~trainee~~ trainee, embalming facility, and funeral service establishment shall provide the Board with ~~his or its~~ a current post-office address which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident ~~trainee~~ trainee, embalming facility, or funeral service establishment shall be validly given when mailed to the address so provided.

The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board."

Section 3. G.S. 90-210.23(e) reads as rewritten:

"(e) The Board is empowered to regulate and inspect, according to law, funeral service ~~establishments,~~ establishments and embalming facilities, their ~~operation~~ operation, and the licenses under which they are operated, and to enforce as provided by law the rules, ~~regulations~~ regulations, and requirements of the Division of Health Services and of the city, ~~town~~ town, or county ~~wherein any such~~ in which the funeral service establishment or embalming facility is maintained and operated. Any funeral establishment or embalming facility ~~which,~~ that, upon inspection, is found not to meet all of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain that the deficiency or other violation has been corrected. The Board is also empowered to enforce compliance with the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time."

Section 4. G.S. 90-210.24(b)(1) reads as rewritten:

"(1) Enter the office, establishment or place of business of any funeral service licensee, funeral director or embalmer in North Carolina, and any office, establishment or place in North Carolina where the practice of funeral service or embalming is carried on, or where that practice is advertised as being carried on, or where a funeral is being ~~conducted,~~ conducted or a body is being embalmed, to inspect the records, office, ~~or establishment,~~ establishment, or facility, or to inspect the practice being carried on or license or registration of any licensee and any resident trainee operating therein;".

Section 5. G.S. 90-210.25(a)(1) reads as rewritten:

"(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of ~~age;~~ age.

b. Be of good moral ~~character,~~ character.

c. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction in a course of study including

the subjects set out in ~~items~~ item e.1. ~~and 2.~~ of this subsection in a mortuary science college approved by the Board, or be a graduate of a mortuary science college approved by the Board.

d. Have completed 12 months of resident traineeship as funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written funeral director examination on the following subjects:

1. ~~Basic health sciences, including microbiology, hygiene, and public health,~~ Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

~~2. Funeral service administration, including accounting, psychology, funeral principles and directing, and~~

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 6. G.S. 90-210.25(a)(2) reads as rewritten:

"(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Be a graduate of a mortuary science college approved by the ~~Board,~~ Board.

d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written embalmer examination on the following subjects:

1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology and forensic pathology,~~ Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

~~2. Funeral service sciences, including embalming and restorative art, and~~

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the

care, transportation and disposition of dead human bodies."

Section 7. G.S. 90-210.25(a)(3) reads as rewritten:

"(3) To be licensed for the practice of funeral service under this Article, a person must:

a. Be at least 18 years of ~~age;~~ age.

b. Be of good moral ~~character;~~ character.

c. Be a graduate of a mortuary science college approved by the ~~Board;~~ Board.

d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written funeral service examination on the following subjects:

1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology, forensic pathology hygiene and public health;~~ Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

2. ~~Funeral service sciences, including embalming and restorative art;~~ Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

~~3. Funeral service administration, including accounting, psychology, funeral principles and directing, and~~

4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 8. G.S. 90-210.25(a)(5) reads as rewritten:

"(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to ~~enrollment; except that for renewals for calendar year 1980 the required length of study shall be a total of 15 hours in the three years immediately preceding January 1, 1980.~~ enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the

requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more, and for all licensees who are, at the time of renewal, members of the General Assembly. The waiver for 25-year licensees shall apply only to those licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or a trainee program, or make an application for a license.

The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee."

Section 9. G.S. 90-210.25 is amended by adding a new subsection to read:

"(a1) Inactive Licenses. -- Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board."

Section 10. G.S. 90-210.25(b)(3) reads as rewritten:

"(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. ~~Provided,~~ Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article."

Section 11. G.S. 90-210.25(d) reads as rewritten:

"(d) Establishment Permit. --

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral ~~establishment,~~ establishment.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the ~~establishment,~~ establishment.

c. It is shown that the funeral establishment satisfies the requirements of ~~G.S. 90-210.27A, and~~ G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a ~~partner~~ partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year.

A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration coming after the first day of February.

(4) The Board may suspend or revoke a permit when an owner, ~~partner~~ partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment."

Section 12. G.S. 90-210.25 is amended by adding a new subsection to read:

"(d1) Embalming Outside Establishment. -- An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board."

Section 13. G.S. 90-210.25(e) reads as rewritten:

"(e) Revocation; Suspension; Compromise; Disclosure. --

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B:

a. Conviction of a felony or a crime involving fraud or moral ~~turpitude;~~ turpitude.

b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral ~~service;~~ service.

c. False or misleading advertising as the holder of a ~~license;~~ license.

d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the ~~licensee;~~ licensee.

e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular ~~licensee;~~ licensee.

f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing ~~business;~~ business.

g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral ~~service;~~ service.

h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the ~~licensee;~~ licensee.

i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed ~~of;~~ of.

j. Violating or cooperating with others to violate any of the provisions of this ~~Article or of~~ Article, the rules and regulations of the ~~Board;~~ Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies;~~ bodies.

l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody ~~thereof;~~ thereof.

m. Knowingly making any false statement on a certificate of ~~death;~~ death.

n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer in compromise to pay a penalty of not more than one thousand dollars ($1,000). The Board may either accept a compromise or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subsection (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the ~~next of kin and of the persons who may be chargeable with the funeral expenses of such decedent.~~ persons who have the legal authority to direct the disposition of the decedent's body. If any ~~such kin be~~ persons are found, ~~his or her~~ their authority and directions shall govern the disposal of the remains of ~~such~~ the decedent. Any funeral service establishment receiving ~~such~~ the remains in violation ~~hereof~~ of this subsection shall make no charge for any service in connection with ~~such~~ the remains prior to delivery of ~~same~~ the remains as stipulated by ~~such kin;~~ the persons having legal authority to direct the disposition of the body. ~~provided, however, this~~ This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the ~~next of kin or the persons chargeable with the expenses~~ persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: 'This statement of disclosure is provided pursuant to the requirements of North Carolina G.S. 90-210.25(e).'"

Section 14. G.S. 90-210.27A reads as rewritten:

"**§ 90-210.27A. Funeral establishments.**

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

(1) Contain one standard type operating ~~table;~~ table.

(2) Contain facilities for adequate ~~drainage;~~ drainage.

(3) Contain a sanitary waste ~~receptacle;~~ receptacle.
(4) Contain an instrument ~~sterilizer;~~ sterilizer.
(5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily ~~cleaned;~~ cleaned.
(6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all ~~times;~~ times.
(7) Have a placard or sign on the door indicating that the preparation room is ~~private; and~~ private.
(8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a reposing room for dead human bodies, of suitable size to accommodate a casket and visitors.

~~(d) No person who has been convicted of a felony shall:~~

~~(1) Own a funeral establishment if it is owned by a sole proprietorship;~~
~~(2) Be a partner in a funeral establishment if it is owned by a partnership;~~
~~(3) Be an officer, member of the board of directors or owner of twenty-five percent (25%) or more of the stock if it is owned by a corporation.~~

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively ~~engaged, on a day-to-day basis,~~ engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment or other licensee under this Article shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the Board."

Section 15. G.S. 90-210.28 reads as rewritten:

"**§ 90-210.28. Fees.**

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit
Application $250.00

Annual renewal	175.00
Late renewal penalty	100.00
~~Establishment reinspection~~ Reinspection fee	100.00
Courtesy card	
Application	75.00
Annual renewal	50.00
Out-of-state licensee	
Application	200.00
Embalmer, funeral director, funeral service	
Application--North Carolina-Resident	150.00
-Non-Resident	200.00
Annual Renewal-embalmer or funeral director	50.00
-funeral service	100.00
Reinstatement fee	50.00
Resident trainee permit	
Application	50.00
Annual renewal	35.00
Late renewal penalty	25.00
Duplicate license certificate	25.00
Chapel registration	
Application	150.00
Annual renewal	100.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Mortuary Science to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

Section 16. G.S. 90-210.41 reads as rewritten:

"**§ 90-210.41. Definitions.**

As used in this Article, unless the context requires otherwise:

(1) 'Authorizing agent' means a person legally entitled to ~~order~~ order, or carry out the legal order for, the cremation of human remains. ~~An authorizing agent shall be, in order of priority, a spouse, an adult child, a parent, any adult sibling, guardian or close relation of the deceased.~~ In the case of indigents or any other individuals whose final disposition is the responsibility of the State, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the authorizing agent. In the case of individuals whose death occurred in a nursing home or other private institution, and in which the institution is charged

with making arrangements for the final disposition of the deceased, a representative of the institution, if legally authorized, may serve as the authorizing agent.

(2) 'Board' means the North Carolina State Board of Mortuary Science.

~~(3) 'Casket' means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal or other rigid material and ornamented and lined with fabric.~~

(4) 'Closed container' means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of cremated remains or the entrance of foreign material.

(5) 'Cremated remains' means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.

(6) 'Cremation' means the technical process, using heat, that reduces human remains to bone fragments.

(7) 'Cremation chamber' means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.

(8) 'Cremation container' means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet all of the standards established by the rules adopted by the Board.

(9) 'Crematory' means the building or portion of a building that houses the cremation chamber and that may house the holding facility, business office or other part of the crematory business. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.

(10) 'Crematory authority' means the North Carolina Crematory Authority.

(11) 'Crematory operator' means the legal entity which is licensed by the Board to operate a crematory and perform cremations.

~~(12) 'Holding facility' means an area within or adjacent to the crematory, designated for the retention of human remains prior to cremation. A holding facility must comply with any applicable public health laws and rules and must meet all of the standards established by the rules adopted by the Board.~~

(13) 'Human remains' means the body of a deceased person, including a human fetus, regardless of the length of gestation, or part of a body ~~or limb~~ that has been removed from a living or deceased person.

(14) 'Niche' means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.

~~(15) 'Scattering area' means a designated area for the scattering of cremated remains.~~

~~(16) 'Temporary container' means a temporary receptacle for cremated remains, usually made of cardboard, plastic film or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.~~

~~(17) 'Urn' means a receptacle designed to permanently encase the cremated remains.~~"

Section 17. G.S. 90-210.43 reads as rewritten:

"**§ 90-210.43. Licensing and inspection.**

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity may erect, maintain and conduct a crematory in this State and may provide the necessary appliances and facilities for the cremation of human remains, provided that such person has secured a license as a crematory operator in accordance with the provisions of this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning regulations.

(c) Application for a license as a crematory operator shall be made on forms furnished and prescribed by the Board. The Board shall examine the premises and structure to be used as a crematory and shall issue a renewable license to the crematory operator if the applicant meets all the requirements and standards of the Board and the requirements of this Article. ~~In the event of a change of ownership of a crematory, at least 30 days prior to the change the new owners shall provide the Board with the name and address of the new owners.~~

(d) Every application for licensure shall identify the individual who is responsible for overseeing the management and operation of the crematory. The crematory operator shall keep the Board informed at all times of the name and address of the manager.

(d1) All licenses shall expire on the last day of December of each year. A license may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license may be renewed by paying a late fee as provided in G.S. 90-210.48 in addition to the annual renewal fee. Licenses that remain expired six months or more require a new application for renewal. Licenses are not transferable. A new application for a license shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.

(e) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this ~~Article.~~ Article, or unless otherwise permitted by statute.

(f) Whenever the Board finds that an owner, ~~partner~~ partner, manager, member, or officer of a crematory operator or an applicant to become a crematory operator, or that any agent or employee of a crematory operator or an applicant to become a crematory operator, with the direct or implied permission of such owner, ~~partner~~ partner, manager, member, or officer, has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with the procedures of Chapter 150B:

(1) Conviction of a felony or a crime involving fraud or moral ~~turpitude;~~ turpitude.

(2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of ~~cremation;~~ cremation.

(3) False or misleading ~~advertising;~~ advertising.

(4) Gross immorality, including being under the influence of alcohol or drugs while performing cremation ~~services;~~ services.

(5) Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been cremated or otherwise disposed ~~of;~~ of.

(6) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the ~~Board;~~ Board.

(7) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies;~~ bodies.

(8) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in ~~G.S. 90-210.47(e);~~ G.S. 90-210.47(e).

(9) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000).

(g) The Board and Crematory Authority may hold hearings in accordance with the provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly by the Board and the Crematory Authority. The Board and the Crematory Authority shall jointly constitute an 'agency' under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory operators and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for

each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation or proceeding conducted by it or conducted jointly with the Crematory Authority. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor."

Section 18. G.S. 90-210.44 reads as rewritten:

"**§ 90-210.44. Authorization and record keeping.**

The Board shall establish requirements for record ~~keeping and~~ keeping, authorizations, and cremation reports. ~~it~~ It shall be a violation of this Article for any crematory operator to fail to comply with the requirements."

Section 19. G.S. 90-210.45 reads as rewritten:

"**§ 90-210.45. Cremation procedures.**

(a) No human body shall be cremated before the crematory operator receives a death certificate signed by the attending physician or an authorization for cremation signed by a medical examiner.

(b) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred. In the event such death comes under the jurisdiction of the medical examiner, the human remains shall not be received by the crematory operator until authorization to cremate has been received in writing from the medical examiner of the county in which the death occurred. In the event the crematory operator is authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable.

(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber. Relatives of the deceased, the authorizing agent, medical examiners and law enforcement officers in the execution of their duties shall be authorized to have access to the holding facility and crematory facility.

(c1) Human remains shall be cremated only while enclosed in a cremation container.

(d) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(d1) Every crematory shall have a holding facility, within or adjacent to the crematory, designated for the retention of human remains prior to cremation. The

holding facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(e) Crematory operators shall comply with standards established by the Board for the reduction and pulverization of human remains by the cremation process."

Section 20. G.S. 90-210.46(a) reads as rewritten:

"(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. ~~A copy of this statement shall be retained by the crematory operator.~~ The crematory operator may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory operator pursuant to G.S. 90-210.44."

Section 21. G.S. 90-210.47(b) reads as rewritten:

"(b) A crematory operator shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory operator that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization."

Section 22. G.S. 90-210.48(a) reads as rewritten:

"**§ 90-210.48. Fees.**

(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory operators and applicants:

(1)	Licensee application fee.	$400.00
(2)	Annual renewal fee.	150.00
(3)	Late renewal penalty.	75.00
(4)	Re-inspection fee.	100.00
(5)	Per cremation fee.	10.00
(6)	Late fee, per cremation.	10.00
(7)	Late fee, cremation report.	75.00 per month."

Section 23. G.S. 90-210.60(3) reads as rewritten:

"(3) 'Insurance company' means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;".

Section 24. G.S. 90-210.63(a)(2) reads as rewritten:

"(2) The original contracting preneed licensee shall immediately pay all ~~such~~ funds received to the successor funeral establishment ~~so designated;~~ designated. ~~provided, however, regardless~~ Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). ~~and~~

~~provided further, if~~ Except when there was a substitution under G.S. 90-210.68(d1) and (e), if the original contracting preneed licensee did not retain any portion of payments made ~~to it~~ as is permitted by G.S. 90-210.61(a)(2) then ~~such~~ the preneed licensee may retain up to ten percent (10%) of ~~said~~ the funds received from the financial institution. Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon."

Section 25. G.S. 90-210.64(a) reads as rewritten:

"(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance or similar claim form and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board."

Section 26. G.S. 90-210.66(b) reads as rewritten:

"(b) From the fee ~~of fifteen dollars ($15.00)~~ for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit two dollars ($2.00) into the Fund. The Board may suspend the deposits into the Fund at any time and for any period for which the Board determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve."

Section 27. G.S. 90-210.67 reads as rewritten:

"**§ 90-210.67. Application for license.**

(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. There shall be two types of licenses: a preneed funeral establishment license and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license. The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act. Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, they may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed

preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event they engage in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of Insurance. Every preneed funeral contract shall be signed by a person licensed as a funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the General Statutes.

Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Board. Each application shall contain at least the following: the full names and addresses (both residence and place of business) of the applicant, and every partner, member, officer and director thereof if the applicant is a partnership, limited liability company, association, or corporation and any other information as the Board shall deem necessary. A preneed funeral establishment license shall be valid only at the address stated in the application or at a new address approved by the Board.

(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than one hundred fifty dollars ($150.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed one hundred fifty dollars ($150.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and ~~Each~~ each preneed funeral establishment licensee shall pay annually to the Board on or before ~~June 30 of each year~~ that date a license renewal fee of not more than one hundred fifty dollars ($150.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than one hundred dollars ($100.00) in addition to the annual renewal fee.

(c) An application for a preneed sales license shall be accompanied by a nonrefundable application fee of not more than fifty dollars ($50.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed fifty dollars ($50.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed sales license provided the applicant has met the qualifications to engage in preneed funeral planning as established by the Board unless it determines that the applicant has violated any provision of G.S. 90-210.69(c). The license shall expire on December 31 and ~~Each~~ each preneed sales licensee shall pay annually to the Board on or before ~~June 30 of each year,~~ that date a license renewal fee of not more than fifty dollars ($50.00). On or before the first day of February, a license may be

renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than twenty-five dollars ($25.00) in addition to the annual renewal fee.

(d) Any person selling a preneed funeral contract, whether funded by a trust deposit or a prearrangement insurance policy, shall remit to the Board, within 10 days of the sale, a fee ~~of fifteen dollars ($15.00)~~ not to exceed twenty dollars ($20.00) for each ~~sale.~~ sale and a copy of each contract. The person shall pay a late fee of not more than twenty-five dollars ($25.00) for each late filing and payment. The ~~fee~~ fees shall not be remitted in cash.

(d1) The Board may also set and collect a fee of not more than twenty-five dollars ($25.00) for the late filing of a certificate of performance and a fee of not more than one hundred and fifty dollars ($150.00) for the late filing of an annual report.

(e) The fees collected under this Article, except for monies used pursuant to G.S. 90-210.66, shall be used for the expenses of the Board in carrying out the provisions of this Article. Any funds collected under this Article and remaining with the Board after all expenses under this Article for the current fiscal year have been fully provided for shall be paid over to the General Fund of the State of North Carolina. Provided, however, the Board shall have the right to maintain an amount, the cumulative total of which shall not exceed twenty percent (20%) of gross receipts under this Article for the previous fiscal year of its operations, as a maximum contingency or emergency fund.

(f) Any entity licensed by the Commissioner of Banks under Article 13B of Chapter 90 of the General Statutes before July 9, 1992 shall be entitled to have its license renewed notwithstanding that it is not a funeral establishment, provided it otherwise satisfies the requirements of this Article."

Section 28. G.S. 90-210.68 reads as rewritten:

"**§ 90-210.68. Licensee's books and records; notice of transfers, assignments and terminations.**

(a) Every preneed licensee shall keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing prearrangement insurance policies. The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its examiners, which the Board may appoint to assist in the enforcement of this Article, may during normal hours of operation and periods shortly before or after normal hours of operation, investigate the books, records, and accounts of any licensee under this Article with respect to trust funds, preneed funeral contracts, and prearrangement insurance policies. Any preneed licensee who, upon inspection, fails to meet the requirements of this subsection or who fails to keep an appointment for an inspection shall pay a reinspection fee to the Board in an amount not to exceed one hundred dollars ($100.00). The Board may require the attendance of and

examine under oath all persons whose testimony it may require. Every preneed licensee shall submit a written report to the Board, at least annually, in a manner and with such content as established by the Board, of its preneed funeral contract sales and performance of such contracts. The Board may also require other reports.

(b) A preneed licensee may transfer preneed funds held by it as trustee from the financial institution which is a party to a preneed funeral contract to a substitute financial institution that is not a party to the contract. Within 10 days after the transfer, the preneed licensee shall notify the Board, in writing, of the name and address of the transferee financial institution. Before the transfer may be made, the transferee financial institution shall agree to make disclosures required under the preneed funeral contract to the Board or its inspectors or examiners. If the contract is revocable, the licensee shall notify the contracting party of the intended transfer.

(c) If any preneed licensee transfers or assigns its assets or stock to a successor funeral establishment or terminates its business as a funeral establishment, the preneed licensee and assignee shall notify the Board at least 15 days prior to the effective date of the transfer, assignment or termination: provided, however, the successor funeral establishment must be a preneed licensee or shall be required to apply for and be granted such license by the Board before accepting any preneed funeral contracts, whether funded by trust deposits or preneed insurance policies. Provided further, a successor funeral establishment shall be liable to the preneed funeral contract purchasers for the amount of contract payments retained by the assigning or transferring funeral home pursuant to G.S. 90-210.61(a)(2).

(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

(d1) When a preneed funeral establishment license lapses or is terminated for any reason, the preneed licensee shall immediately divest of all the unperformed preneed funeral contracts and shall transfer them and any amounts retained under G.S. 90-210.61(a)(2) to another preneed funeral establishment licensee pursuant to the procedures of subsection (e) of this section.

(e) In the event that any preneed licensee is unable or unwilling or is for any reason relieved of its responsibility to perform as trustee or to perform any preneed funeral contract, the Board, with the written consent of the purchaser of the preneed funeral contract, or after the purchaser's death or incapacity, the preneed funeral contract beneficiary ~~may~~ shall order the contract and any amounts retained pursuant to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that the substitute licensee agrees to accept such assignment.

(f) The substitute preneed licensee under subsections (d1) and (e) of this section shall be liable to the preneed funeral contract purchasers for the amount of contract payments that had been retained by, and that the substitute preneed licensee has received from, the assigning preneed licensee."

Section 29. G.S. 90-210.69(c) reads as rewritten:

"(c) In accordance with the provisions of Chapter 150B of the General Statutes, ~~If~~ if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a ~~license;~~ license.

(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such ~~activities;~~ activities.

(3) A crime involving fraud or moral turpitude by conviction ~~thereof;~~ thereof.

(4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral ~~planning;~~ planning.

(5) False or misleading ~~advertising; or~~ advertising.

(6) Violating or cooperating with others to violate any provision of this ~~Article or~~ Article, the rules and regulations of the Board, ~~pursuant thereto.~~ or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000)."

Section 30. G.S. 90-210.69(e) reads as rewritten:

"(e) ~~All hearings under this Article shall be conducted pursuant to G.S. 150B-40(e).~~ Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes."

Section 31. G.S. 90-210.70(c) reads as rewritten:

"(c) If a corporation or limited liability company embezzles or fraudulently or knowingly and willfully misapplies or converts preneed funeral funds as provided in subsection (a) hereof or otherwise violates any provision of this Article, the officers, directors, members, agents, or employees responsible for committing the offense shall be fined or imprisoned as herein provided."

Section 32. G.S. 90-210.70(d) reads as rewritten:

"(d) The Board shall have the power to investigate violations of this section and shall deliver all evidence of violations of subsection (a) of this section to the district attorney in the county where the offense occurred. The Board shall, with the fees collected under this Article, employ legal counsel and other staff to monitor preneed trusts, investigate complaints, audit preneed trusts, and be responsible for delivering evidences to the district attorney when there is evidence ~~of criminal violation.~~ that a felony has been committed by a licensee. The record of complaints, auditing, and

enforcement shall be presented in an annual report from the Board to the General Assembly."

Section 33. Article 13D of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-210.73. Not public record.**

The names and addresses of the purchasers and beneficiaries of preneed funeral contracts filed with the Board shall not be subject to Chapter 132 of the General Statutes."

Section 34. Article 16 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 7. Disposition of Body or Body Parts.

"§ 130A-422. Authority to dispose of body or body parts.

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

(1) The surviving spouse.
(2) A majority of the surviving children.
(3) The surviving parents.
(4) A majority of the surviving siblings.
(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.
(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes

or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

Section 35. The Board shall adopt temporary rules to implement the provisions of this act.

Section 36. This act becomes effective October 1, 1997.

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June 3, 1997

MEMORANDUM

TO: **Senate Committee on Commerce**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 485; Funeral establishment amendments.**

House Bill 485 makes various amendments to Chapter 90 of the General Statutes that affect the regulation of the practice of funeral service, cremations, and funeral and burial trust funds. It also amends Article 16, Chapter 130A, with regard to disposition of bodies.

Section 1 amends G.S. 90-210.20(e1) by amending the definition of "funeral chapel" to make it inclusive of funeral chapels operated by licensees other than funeral homes. The effect is to place these other funeral chapels under the control of the Board of Mortuary Science.

Section 2 amends G.S. 90-210.23(d) to allow the Board of Mortuary Science to inspect embalming facilities other than those contained in funeral homes. Those contained in funeral homes can already be inspected because the funeral homes themselves are subject to inspection.

Section 3 amends G.S. 90-210.23(e) to add embalming facilities to those facilities subject to regulation and inspection by the Board. It also grants the Board power to enforce compliance with the Federal Trade Commission Funeral Rules.

Section 4 amends G.S. 90-210.24(b)(1) to conform it to the amendments contained in sections 2 and 3 of the bill dealing with the regulation of embalming facilities.

Sections 5, 6, and 7 of the bill amend G.S. 90-210.25(a)(1), (2), and (3). These subdivisions of G.S. 90-210.25(a) deal with the examinations given for licenses to practice funeral directing, embalming, and funeral service. The amendments change the content of the examinations. The intent is to change the examinations to agree with those currently being given throughout the United States.

Section 8 of the bill amends G.S. 90-210.25(a)(5) to allow licensees to carry over a maximum of 5 hours of continuing education to be used for the following year's requirement. It also adds a provision that a licensee issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year. Finally, it changes the standard for waiver of the continuing education requirement. The present waiver of continuing education requirements for 25 year licensees shall only apply to licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or trainee program, or make an application for a license.

Section 9 amends G.S. 90-210.25 by adding a new subsection (a1) allowing the issuance of "inactive licenses." Holders of inactive licenses are limited to only voting in elections for members of the State Board of Mortuary Science. The new subsection also establishes the criteria for reactivation of a license.

Section 10 amends G.S. 90-210.25(b)(3) to allow the Board to grant special permits to nonresidents for purposes of teaching continuing education programs and for the purpose of doing work in connection with disasters.

Section 11 amends G.S. 90-210.25(d) to add limited liability companies to the list of business entities that may operate funeral establishments and clarifies that permits may be revoked or suspended for violations by various persons in charge of the operation..

Section 12 amends G.S. 90-210.25 by adding a new subsection (d1) that requires embalming facilities to register with the Board of Mortuary Science. This conform to the changes made in sections 2, 3, and 4 of the bill.

Section 13 of the bill amends G.S. 90-210.25(e). The amendments allow the board to enforce the Federal Trade Commission Funeral Rule (conforming to Section 3 of the bill), and change the provisions concerning who has authority to direct disposal of a body to conform with new, specific provisions found in Section 34 of the bill.

Section 14 of the bill amends G.S. 90-210.27A by deleting subsection (d) which presently provides that a convicted felon may not be in the funeral business. Subsection (e) is amended to recognize the existence of limited liability companies.

Section 15 of the bill is a technical correction to G..S. 90-210.28, which deals with fees. No fees are changed in this section of the bill..

Section 16 of the bill makes various changes in the definitions applicable to cremations. Certain definitions are eliminated because the term does not appear anywhere in the cremation article. The definition of "human remains" is amended to include a human fetus. References to the order of authorizing agency to authorize cremation are eliminated because this is now dealt with in another statute created in section 34 of the bill.

Section 17 of the bill amends G.S. 90-210.43 which deals with licensing and inspection of cremation establishments. A crematory license year is established. License renewal procedures and late fees are established. The amendment to subsection (e) acknowledges that the remains of

terminated pregnancies may be disposed of by approved hospital type incineration. The amendments grant the Board authority to accept a monetary penalty as a compromise in an enforcement action. Fees for reinspection of crematories not meeting proper standards are authorized.

Section 18 amends G.S. 90-210.44 to authorize the Board to establish requirements for cremation reports.

Section 19 amends G.S. 90-210.45 to require that a body be enclosed in a container when cremated. This does not require an actual casket. The description of a crematory holding facility that was eliminated in the amendments contained in section 16, is moved to this statutory section.

Section 20 amends G.S. 90-210.46(a) to specifically authorize a crematory operator to store cremated remains as directed by the authorizing agent.

Section 21 amends 90-210.47(b) to clarify that a crematory operator must have a signed cremation authorization form before cremating a body.

Section 22 amends 90-210.48(a) to add late fees for late payment of cremation fees and for late filing of cremation reports. The fees authorized are the maximum amounts.

Section 23 amends 90-210.60(3) to recognize existence of limited liability companies in the definition of an insurance company.

Section 24 amends G.S. 90-210.63(a)(2) to provide that when the purchaser or beneficiary of a preneed contract changes funeral homes, the first funeral home may keep its 10% retention except where the first funeral home is divested of its preneed contracts as provided in section 28 of the bill.

Section 25 of the bill amends G.S. 90-210.64(a) to require a funeral home to mail proof of its performance of a preneed contract to the Board within 10 day after receiving payment.

Section 26 amends G.S. 90-210.66(b) to eliminate the referenced to a specific preneed funeral contract fee since the fee is established elsewhere (see section 27 of the bill).

Section 27 of the bill amends G.S. 90-210.67 which deals with licenses to sell preneed funeral contracts. Limited liability companies are recognized as a licensable entity. A preneed license year is established as well as renewal procedures and late fees. Copies of preneed contracts are required to be filed with the Board. Other fees and late fees are established.

Section 28 of the bill amends G.S. 90-210.68. The amendments establish reinspection fees for preneed licensees, require a preneed funeral establishment to divest itself of all unperformed preneed contracts and transfer the funds if its license lapses or is terminated, and make the substitute licensee responsible to the purchaser for the money it receives from the assigning preneed licensee.

Section 29 clarifies that disciplinary action is in accordance with the provisions of Chapter 150B (Administrative Procedure Act), allows for monetary offers in compromise of violation proceedings, and specifically authorizes the Board to enforce the Federal Trade Commission Funeral Rule within its preneed regulatory authority.

Section 30 amends G.S. 90-210.69(e) to eliminate the requirement that the Board use administrative law judges for administrative hearings involving funeral trust funds.

Section 31 amends G.S. 90-210.70(c). This is a conforming amendment recognizing the existence of limited liability companies.

Section 32 of the bill amends G.S. 90-210.70(d) to eliminate the requirement that the Board report misdemeanor violations of this section (dealing with fraud and embezzlement) to the district attorney. Felony violations must be reported.

Section 33 adds a new section, G.S. 90-210.73, to the Funeral Trust Fund article. It provides that the names and addresses of purchasers and beneficiaries of preneed funeral contracts filed with the Board are not public records.

Section 34 of the bill amends Article 16 of Chapter 130A by adding a new Part 7 dealing with the disposition of bodies and body parts. The new Article allows a person 18 years of age or older to authorize disposition of their body. Where there is no written authorization, an order of priority is established to indicate who may authorize disposal of the body. The list showing the order of priority for authorization is found on page 23, lines 21 through 34 of the bill. The provision specifically provides that it does not affect authorizations for anatomical gift nor does it affect the statutes relating to autopsies.

Section 35 provides that the Board adopt temporary rules to implement the provisions of this act. Section 36 provides that the act becomes effective October 1, 1997.

H485-SMRL-002

ATTORNEY AT LAW
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June 2, 1997

Representative Jerry C. Dockham
State Legislativ Building
Raleigh NC

Dear Representative Dockham:

I have heard that your House Bill 485, pertaining to funeral service, will be heard by Senate Commerce on Tuesday, June 3, at 11:00 a.m.

I wanted you to know that I have this information, to save you the trouble of contacting me. I will be present, and I hope representatives of the Board will also be there to answer questions.

Sincerely,

WRHoke

William R. Hoke

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1075

Short Title: Appreciation of Reverse Mortgages. (Public)

Sponsors: Representatives Hall; Baker, Bonner, Boyd-McIntyre, Culp, Cunningham, Davis, Eddins, Fox, Grady, Hiatt, Hill, Justus, Kinney, Kiser, Mitchell, Morris, Mosley, Owens, Rayfield, Sherrill, Smith, Starnes, Tolson, Weatherly, Wilkins, C. Wilson, and Womble.

Referred to: Commerce, if favorable, Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT LENDERS TO CONTRACT FOR AND RECEIVE SHARED APPRECIATION IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-270 reads as rewritten:

"**§ 53-270. Prohibited acts.**

Reverse mortgage lenders are prohibited from engaging in any of the following acts in connection with the making, servicing, or collecting of a reverse mortgage loan:

(1) Misrepresenting material facts, making false promises, or engaging in a course of misrepresentation through agents or otherwise.

(2) Failing to disburse funds in accordance with the terms of the reverse mortgage loan contract or other written commitment.

(3) Improperly refusing to issue a satisfaction of a mortgage.

(4) Engaging in any action or practice that is unfair or deceptive, or that operates a fraud on any person.

(5) Contracting for or receiving shared ~~appreciation.~~ appreciation or shared equity, other than in an amount:

a. Not to exceed ten percent (10%) of the value of the property at the time of the loan repayment; and

b. Permitted in conjunction with a loan that:

1. Is outstanding for 24 months or longer; and

2. Either (i) is guaranteed or insured by an agency of the federal government, or (ii) has originated under a reverse mortgage program approved by the Federal National Mortgage Corporation, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

(6) Closing a reverse mortgage loan without receiving certification from a ~~counselor~~ person who is certified as a reverse mortgage counselor by the State that the borrower has received counseling on the advisability of a reverse mortgage loan and the appropriate reverse mortgage loan for the borrower.

(7) Failing to comply with this Article."

Section 2. This act becomes effective October 1, 1997, and applies to contracts for loans entered into on or after that date.

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June 2, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 1075 Appreciation of Reverse Mortgages. (Rep. Hall)**

House Bill 1075 amends the Reverse Mortgage Act to allow lenders to contract for and receive shared appreciation or equity if the amount does not exceed 10% of the value of the property at the time of the loan repayment, the loan involved is outstanding 24 months or longer, and the reverse mortgage is guaranteed or insured by the federal government or originated under a program approved by specified federal mortgage entities.

The Reverse Mortgage Act, (Article 21 of Chapter 53) was enacted by the General Assembly in 1991 to allow senior homeowners (62 years of age or older) to access the equity in their homes without having to sell their homes or take out home equity loans. A reverse mortgage provides payments to the homeowner over a period of years, and the debt is generally paid off when the homeowner dies, moves or sells the home.

Under current law, contracting for or receiving shared appreciation is included as a prohibited act by a reverse mortgage lender. This bill would allow the lender to receive it under the conditions listed above. In addition, this bill requires that mandated counseling be provided by a state certified reverse mortgage counselor.

This act becomes effective October 1, 1997, and applies to contracts for loans entered into in or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 994

Short Title: Competitive Pay Telephone. (Public)

Sponsors: Representative G. Wilson.

Referred to: Commerce.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW PAY TELEPHONE PROVIDERS TO OBTAIN LINE ACCESS FROM COMPETITIVE LOCAL PROVIDERS OF TELEPHONE SERVICE AND TO ELIMINATE THE STATUTORY REQUIREMENT THAT LINE ACCESS RATES BE SET ON A MEASURED RATE BASIS.

The General Assembly of North Carolina enacts:

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

"(c) The Commission shall be authorized, consistent with the public interest, to adopt procedures for the issuance of a special certificate to any person for the limited purpose of offering telephone service to the public by means of coin, coinless, or key-operated pay telephone instruments. This service may be in addition to or in competition with public telephone services offered by the certificated telephone company in the service area. ~~The certificated local exchange telephone company in the service area where any new pay telephone service is proposed shall be the only provider of the access line from the pay instrument to the network, and the rates approved by the Commission for this access line shall be fully compensatory, reflect the business nature of the service, and shall be set on a measured usage rate basis where facilities are available or on a message rate basis otherwise.~~ The access line from the pay instrument to the network may be obtained from the local exchange telephone company in the service area where the pay instrument is located, from any certificated competitive local provider, or any other provider authorized by the Commission. The Commission shall promulgate rules to implement the service authorized by this section, recognizing the competitive nature of the offerings and, notwithstanding any other provision of law, the Commission shall determine the

extent to which such services shall be regulated and to the extent necessary to protect the public interest regulate the terms, conditions, and rates for such service and the terms and conditions for interconnection to the local exchange network."

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

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June 3, 1997

MEMORANDUM

TO: **Senate Committee on Commerce**

FROM: **Steven Rose, Committee Counsel for Public Utilities**

RE: **House Bill 994; Competitive access for pay telephones**

House Bill 994 amends G.S. 62-110(c). This subsection authorizes competitive pay telephone service to the public. The current provision provides that the pay telephone must be connected to the certificated local exchange telephone company and that the rates approved by the Utilities Commission for the access line must be set on a fully compensatory, measured usage rate basis if possible, or on a fully compensatory message rate basis if a measured basis is not possible.

House Bill 994 authorizes the pay telephone to be connected to any authorized local exchange provider and eliminates the requirement that the service be on a measured usage rate basis if possible.

Legislation passed by the 1995 General Assembly authorized competitive local exchange telephone service as well as alternative rate making procedures.

The act becomes effective July 1, 1997.

H994-SMRL-002

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

MINUTES
SENATE COMMERCE COMMITTEE
June 10, 1997

A meeting of the Senate Commerce Committee was held on June 10, 1997, at 11:00 a.m. in Room 1027 of the State Legislative Building. Fifteen members of the Committee were present. Visitor Registration Sheets are attached listing others attending the meeting.

Senator R. C. Soles, Jr., Chairman, called the meeting to order.

The following bills were considered by the Committee:

HB 407, AN ACT TO REPEAL THE CURRENT STATUTES REGARDING FRAUDULENT CONVEYANCES AND TO ADOPT THE UNIFORM FRAUDULENT TRANSFER ACT IN ORDER TO MODERNIZE NORTH CAROLINA LAW AND HARMONIZE OUR LAW ON THIS SUBJECT WITH THOSE STATES THAT HAVE ADOPTED THIS UNIFORM ACT.

This bill was considered by the Committee at a previous meeting and referred to a Subcommittee consisting of Senator Dalton, Chairman, Senators Ballance, Cochrane and Rand. Senator Dalton offered a Proposed Committee Substitute for HB 407 and moved its adoption. Motion carried. He reported that the Subcommittee met twice and felt they had worked out the points of contention expressed at the earlier meeting. He said the Bar Association had reviewed the Committee Substitute and felt comfortable with the language.

Senator Dalton moved that the Committee Substitute for House Bill 407 be given a favorable report. Motion carried.

The next order of business was consideration of a package of bills pertaining to Managed Care. Senator Perdue, the sponsor of these bills, asked to make a statement prior to consideration of the individual bills. She gave some background on why the bills were needed and how they had been formulated. She said that all facets of the health care industry had been involved in the discussions including the Medical Society, PPO's, staff from the State Department of Insurance and others and they were all supportive of the legislation.

SB 932, AN ACT TO MAKE IMPROVEMENTS IN THE OPERATIONS OF HEALTH MAINTENANCE ORGANIZATIONS IN NORTH CAROLINA. Senator Reeves moved that the Proposed Committee Substitute for SB 932 be adopted. Motion carried. (Refer to the attached "Summary, Department of Insurance Managed Care Bills" and a copy of memorandum from Committee Counsel, Linwood, Jones, attached.) Mr. Bill Hale with the Department of Insurance assisted Senator Perdue in answering questions.

Senator Ballentine moved that the Committee Substitute for SB 932 be given a favorable report. Motion carried.

SB 933, AN ACT TO ESTABLISH STANDARDS FOR COVERAGE AND PROVIDER NETWORKS UNDER HEALTH INSURANCE POLICIES AND MANAGED CARE PLANS. Senator Warren moved the adoption of the Proposed Committee Substitute for SB 933. Motion carried. (Refer to above mentioned summaries for explanation.)

Senator Warren moved that the Committee Substitute for SB 933 be given a favorable report. Motion carried.

SB 934, AN ACT TO REWRITE AND MODERNIZE THE LAWS ON PREFERRED HEALTH CARE PROVIDERS, PREFERRED PROVIDER ORGANIZATIONS, AND PREFERRED PROVIDER BENEFIT PLANS. Senator Kerr moved the adoption of the Proposed Committee Substitute for Senate Bill 934. Motion carried. (Refer to above mentioned summaries for explanation.)

Senator Kerr moved that the Committee Substitute for Senate Bill 934 be given a favorable report. Motion carried.

SB935, AN ACT TO ESTABLISH PROCEDURES AND RIGHTS FOR MANAGED CARE PLAN MEMBERS IN UTILIZATION REVIEW DECISIONS AND GRIEVANCES AGAINST MANAGED CARE ORGANIZATIONS. Senator Kerr moved that the Proposed Committee Substitute for Senate Bill 935 be adopted. Motion carried.

Refer to the attached summaries for explanation.

Senator Ledbetter moved that the Committee Substitute for Senate Bill 935 be given a favorable report. Motion carried.

A copy of an article from The News & Observer dated June 11, 1997, which summarizes the discussion on the above bills is included as a part of these Minutes. Also included are letters of support from the AARP.

The meeting adjourned at 12 Noon.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, June 11, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **407** Uniform Fraudulent Transfer Act.

Draft Number:	PCS 1393
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, June 18, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **932** HMO Operations.

Draft Number:	PCS8721
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **933** Health Ins/Coverage & Netwks.

Draft Number:	PCS8722
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **934** Preferred Provider Amendments.

Draft Number:	PCS8719
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **935** Mgd. Care/Utiliz.&Griev.

Draft Number:	PCS7813
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 4

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 407*
Second Edition Engrossed 4/8/97

Short Title: Uniform Fraudulent Transfer Act. (Public)

Sponsors: Representatives Baddour and Culpepper (Cosponsors).

Referred to: Judiciary II.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE CURRENT STATUTES REGARDING FRAUDULENT CONVEYANCES AND TO ADOPT THE UNIFORM FRAUDULENT TRANSFER ACT IN ORDER TO MODERNIZE NORTH CAROLINA LAW AND HARMONIZE OUR LAW ON THIS SUBJECT WITH THOSE STATES THAT HAVE ADOPTED THIS UNIFORM ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 39 of the General Statutes is repealed.

Section 2. Chapter 39 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3A.

"Uniform Fraudulent Transfer Act.

"§ 39-23.1. Definitions.

As used in this Article:

(1) 'Affiliate' means:

a. A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not exercised the power to vote;

b. A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,
   1. As a fiduciary or agent without sole power to vote the securities; or
   2. Solely to secure a debt, if the person has not in fact exercised the power to vote;
c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or
d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) 'Asset' means property of a debtor, but the term does not include:
   a. Property to the extent it is encumbered by a valid lien;
   b. Property to the extent it is generally exempt under nonbankruptcy law; or
   c. An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) 'Claim' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) 'Creditor' means a person who has a claim.

(5) 'Debt' means liability on a claim.

(6) 'Debtor' means a person who is liable on a claim.

(7) 'Insider' includes:
   a. If the debtor is an individual,
      1. A relative of the debtor or of a general partner of the debtor;
      2. A partnership in which the debtor is a general partner;
      3. A general partner in a partnership in which the debtor is a general partner; or
      4. A corporation of which the debtor is a director, officer, or person in control;
   b. If the debtor is a corporation,
      1. A director of the debtor;
      2. An officer of the debtor;

3. A person in control of the debtor;
4. A partnership in which the debtor is a general partner;
5. A general partner in a partnership in which the debtor is a general partner; or
6. A relative of a general partner, director, officer, or person in control of the debtor;

c. If the debtor is a partnership,
1. A general partner in the debtor;
2. A relative of a general partner in, a general partner of, or a person in control of the debtor;
3. Another partnership in which the debtor is a general partner;
4. A general partner in a partnership in which the debtor is a general partner; or
5. A person in control of the debtor;

d. An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

e. A managing agent of the debtor.

(8) 'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) 'Person' means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) 'Property' means anything that may be the subject of ownership.

(11) 'Relative' means an individual related by consanguinity within the third degree as determined in accordance with G.S. 104A-1, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) 'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) 'Valid lien' means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"**§ 39-23.2. Insolvency.**

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(2) If applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this Article, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

a. If oral, when it becomes effective between the parties; or

b. If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

"**§ 39-23.7. Remedies of creditors.**

(a) In an action for relief against a transfer or obligation under this Article, a creditor, subject to the limitations in G.S. 39-23.8, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by Article 35 of Chapter 1 of the General Statutes;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure,

a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

c. Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

"**§ 39-23.8. Defenses, liability, and protection of transferee.**

(a) A transfer or obligation is not voidable under G.S. 39-23.4(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under G.S. 39-23.7(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this Article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain any interest in the asset transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under G.S. 39-23.4(a)(2) or G.S. 39-23.5 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article 9 of Chapter 25 of the General Statutes, the Uniform Commercial Code.

(f) A transfer is not voidable under G.S. 39-23.5(b):

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

"§ 39-23.9. Extinguishment of cause of action.

A cause of action with respect to a fraudulent or voidable transfer or obligation under this Article is extinguished unless action is brought:

(1) Under G.S. 39-23.4(a)(1), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under G.S. 39-23.4(a)(2) or G.S. 39-23.5(a), within four years after the transfer was made or the obligation was incurred; or

(3) Under G.S. 39-23.5(b), within one year after the transfer was made or the obligation was incurred.

"§ 39-23.10. Supplementary provisions.

Unless displaced by the provisions of this Article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel,

laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"**§ 39-23.11. Uniformity of application and construction.**

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

"**§ 39-23.12. Short title.**

This Article may be cited as the Uniform Fraudulent Transfer Act."

Section 3. The Revisor of Statutes shall cause to be printed with this act all relevant portions of the official comments to the Uniform Fraudulent Transfer Act and all explanatory comments of the drafters of this act, as the Revisor deems appropriate.

Section 4. This act is effective October 1, 1997, and applies to all transfers subject to this act made on or after that date.

SENATE
COMMITTEE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA

JUN 10 1997

SESSION 1997

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ADOPTED D

HOUSE BILL 407*
Second Edition Engrossed 4/8/97
Proposed Senate Committee Substitute H407-PCS1393

Short Title: Uniform Fraudulent Transfer Act. (Public)

Sponsors:

Referred to:

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE CURRENT STATUTES REGARDING FRAUDULENT CONVEYANCES AND TO ADOPT THE UNIFORM FRAUDULENT TRANSFER ACT IN ORDER TO MODERNIZE NORTH CAROLINA LAW AND HARMONIZE OUR LAW ON THIS SUBJECT WITH THOSE STATES THAT HAVE ADOPTED THIS UNIFORM ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 39 of the General Statutes is repealed.

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"ARTICLE 3A.

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"§ 39-23.1. Definitions.

As used in this Article:

(1) 'Affiliate' means:

a. A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not exercised the power to vote;

b. A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

1. As a fiduciary or agent without sole power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote;

c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) 'Asset' means property of a debtor, but the term does not include:

a. Property to the extent it is encumbered by a valid lien;

b. Property to the extent it is generally exempt under nonbankruptcy law; or

c. An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) 'Claim' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) 'Creditor' means a person who has a claim.

(5) 'Debt' means liability on a claim.

(6) 'Debtor' means a person who is liable on a claim.

(7) 'Insider' includes:

a. If the debtor is an individual,

1. A relative of the debtor or of a general partner of the debtor;

2. A partnership in which the debtor is a general partner;

3. A general partner in a partnership in which the debtor is a general partner; or

4. A corporation of which the debtor is a director, officer, or person in control;

b. If the debtor is a corporation,

1. A director of the debtor;
2. An officer of the debtor;
3. A person in control of the debtor;
4. A partnership in which the debtor is a general partner;
5. A general partner in a partnership in which the debtor is a general partner; or
6. A relative of a general partner, director, officer, or person in control of the debtor;

c. If the debtor is a partnership,
1. A general partner in the debtor;
2. A relative of a general partner in, a general partner of, or a person in control of the debtor;
3. Another partnership in which the debtor is a general partner;
4. A general partner in a partnership in which the debtor is a general partner; or
5. A person in control of the debtor;

d. An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

e. A managing agent of the debtor.

(8) 'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) 'Person' means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) 'Property' means anything that may be the subject of ownership.

(11) 'Relative' means an individual related by consanguinity within the third degree as determined in accordance with G.S. 104A-1, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) 'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) 'Valid lien' means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"**§ 39-23.2. Insolvency.**

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(b) A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making transfer voidable under this Article.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

"§ 39-23.3. Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, nonexclusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"§ 39-23.4. Transfers fraudulent as to present and future creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

a. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

b. Intended to incur, or believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;
(3) The transfer or obligation was disclosed or concealed;
(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
(5) The transfer was of substantially all the debtor's assets;
(6) The debtor absconded;
(7) The debtor removed or concealed assets;
(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
(10) The transfer occurred shortly before or shortly after a substantial debt was incurred;
(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor;
(12) The debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as they became due; and
(13) The debtor transferred the assets in the course of legitimate estate or tax planning.

"**§ 39-23.5. Transfers fraudulent as to present creditors.**

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

"**§ 39-23.6. When transfer is made or obligation is incurred.**

For the purposes of this Article:

(1) A transfer is made:

a. With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the

transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

b. With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this Article that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this Article, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

a. If oral, when it becomes effective between the parties; or

b. If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

"**§ 39-23.7. Remedies of creditors.**

(a) In an action for relief against a transfer or obligation under this Article, a creditor, subject to the limitations in G.S. 39-23.8, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by Article 35 of Chapter 1 of the General Statutes;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure,

a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

c. Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

"**§ 39-23.8. Defenses, liability, and protection of transferee.**

(a) A transfer or obligation is not voidable under G.S. 39-23.4(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under G.S. 39-23.7(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this Article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain any interest in the asset transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under G.S. 39-23.4(a)(2) or G.S. 39-23.5 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article 9 of Chapter 25 of the General Statutes, the Uniform Commercial Code.

(f) A transfer is not voidable under G.S. 39-23.5(b):

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor, and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

"§ 39-23.9. Extinguishment of cause of action.

A cause of action with respect to a fraudulent or voidable transfer or obligation under this Article is extinguished unless action is brought:

(1) Under G.S. 39-23.4(a)(1), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under G.S. 39-23.4(a)(2) or G.S. 39-23.5(a), within four years after the transfer was made or the obligation was incurred; or

(3) Under G.S. 39-23.5(b), within one year after the transfer was made or the obligation was incurred.

"**§ 39-23.10. Supplementary provisions.**

Unless displaced by the provisions of this Article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"**§ 39-23.11. Uniformity of application and construction.**

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

"**§ 39-23.12. Short title.**

This Article may be cited as the Uniform Fraudulent Transfer Act."

Section 3. The Revisor of Statutes shall cause to be printed with this act all relevant portions of the official comments to the Uniform Fraudulent Transfer Act and all explanatory comments of the drafters of this act, as the Revisor deems appropriate.

Section 4. This act is effective October 1, 1997, and applies to all transfers subject to this act made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 932

Short Title: HMO Operations. (Public)

Sponsors: Senator Perdue.

Referred to: Commerce.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE IMPROVEMENTS IN THE OPERATIONS OF HEALTH MAINTENANCE ORGANIZATIONS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 67 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-67-11. Additional HMO information.**

(a) In addition to the information filed under G.S. 58-67-10(c), each application shall include a description of the:

(1) Program to be used to evaluate whether the applicant's provider network is sufficient, in numbers and types of providers, to assure that all health care services will be accessible without unreasonable delay.

(2) Program to be used for verifying provider credentials.

(3) Quality management program to assure quality of care and health care services managed and provided through the health care plan.

(4) Utilization review program for the review and control of health care services provided or paid for.

(5) Applicant's provider network and evidence of the ability of that network to provide all health care services to the applicant's prospective enrollees.

(b) G.S. 58-67-10(d) applies to the information specified in this section."

Section 2. G.S. 58-67-50(e) reads as rewritten:

"(e) Effective on January 1, 1989, every health maintenance organization shall provide at least minimum cost and utilization information for group contracts of 100 or more subscribers on an annual basis when requested by the group. Such information shall be compiled in accordance with the Data Collection Form developed by the Standardized HMO Date Form Task Force as endorsed by the Washington Business Group on Health and the Group Health Association of America on November 19, 1986, and any subsequent amendments. Beginning with data for the calendar year 1998, every HMO shall instead provide cost, use of service, prevention, outcomes, and other data as collected in accordance with the latest edition of the Health Plan Employer Data and Information Set (HEDIS) guidelines, as published by the National Committee for Quality Assurance, or in accordance with a different format if the Commissioner deems a different format to be more useful to the Department. Beginning with data for the calendar year 1998, every HMO shall file with the Department, not later than July 1 of the following calendar year, a report on its costs, use of services, and other aspects of performance, in the HEDIS format or in a format prescribed by the Commissioner."

Section 3. G.S. 58-67-100 reads as rewritten:

"**§ 58-67-100. Examinations.**

(a) The Commissioner may make an examination of the affairs of any health maintenance organization and the contracts, agreements or other arrangements pursuant to its health care plan as often as ~~he~~ the Commissioner deems it necessary for the protection of the interests of the people of this State but not less frequently than once every three years. Examinations shall otherwise be conducted under G.S. 58-2-131, 58-2-132, and 58-2-133.

~~(b) Every health maintenance organization shall submit its books and records relating to the health care plan to such examinations and in every way facilitate them. For the purpose of examinations, the Commissioner may administer oaths to, and examine the officers and agents of the health maintenance organization concerning their business.~~

(c) Repealed by Session Laws 1995, c. 360, s. 2(m).

(d) ~~In lieu of such~~ Instead of conducting an examination, the Commissioner may accept the report of an examination made by the ~~Commissioner of Insurance or Commissioner of Public Health~~ HMO regulator of another state."

Section 4. G.S. 58-67-140 reads as rewritten:

"**§ 58-67-140. ~~Suspension or revocation of certificate of authority.~~** License sanctions.

(a) The Commissioner may ~~suspend or revoke any certificate of authority issued to a health maintenance organization under this Article if he finds that any of the following conditions exist:~~ suspend, revoke, or refuse to renew any HMO license if the Commissioner finds that the HMO:

(1) ~~The health maintenance organization is~~ Is operating significantly in contravention of its basic organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted under G.S. 58-67-10, unless

amendments to such submissions have been filed with and approved by the Commissioner.

(2) ~~The health maintenance organization issues evidence~~ Issues evidences of coverage or uses a schedule of premiums for health care services ~~which~~ that do not comply with ~~the requirements of~~ G.S. 58-67-50.

(3) ~~The health maintenance organization no~~ No longer maintains the financial reserve specified in G.S. 58-67-40 or is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(4) ~~The health maintenance organization, or any person on its behalf, has~~ Has itself or through any person on its behalf advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner.

(5) ~~The continued operation of the health maintenance organization~~ Is operating in a manner that would be hazardous to its enrollees.

(6) ~~The health maintenance organization has otherwise failed to substantially comply with this Article.~~ Fails or refuses to comply with any law, order, or rule applicable to the HMO.

(7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data which serves as the basis for any report, required to be submitted under G.S. 58-67-50(e).

(b) A ~~certificate of authority~~ license shall be suspended or revoked only after compliance with ~~the requirements of~~ G.S. 58-67-155.

(c) When ~~the certificate of authority of a health maintenance organization~~ an HMO license is suspended, the ~~health maintenance organization~~ HMO shall not, during the ~~period of such~~ suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or ~~solicitation whatsoever.~~ solicitation.

(d) When ~~the certificate of authority of a health maintenance organization~~ an HMO license is revoked, ~~such organization~~ the HMO shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of ~~such organization.~~ the HMO. ~~It~~ The HMO shall engage in no advertising or ~~solicitation whatsoever.~~ solicitation. The Commissioner may, by written order, permit such further operation of the ~~organization as he~~ HMO as the Commissioner may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage."

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

AARP

Bringing lifetimes of experience and leadership to serve all generations.

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Testimony before the SenateCcommerce Committee in Support of
S.B. 932 - HMO Operations

Summary: The American Association of Retired Persons - which has over 800,000 members in this state - asks this Committee to report favorably on S.B. 932 because the individual member of this type of insurance, the consumer and especially the older consumer, cannot possibly gather and evaluate unaided the kind of information covered by this bill. This is a consumer protection bill. (1) *It will enable the Department of Insurance to exercise the kind of quality-oversight over for which the Department was created*: in this instance, it will be able to monitor the new field of Health Maintenance Organization insurers. *Moreover*, (2) implementing these provisions *will not add to health costs, since all the information which is to be furnished to the Department is undoubtedly already available within the HMO - or should be, if it is acting as a sound and socially responsible business, as we believe most HMO's wish to do.* (3) In several respects, it simply *gives the DoI the kinds of functions with respect to HMO's which already apply to other insurers.*

Specifically: The Department will be able to assure that: (1) the network of providers - physicians, hospitals and others - who are associated with that HMO are sufficient in number and location to meet members' needs; (2) these providers are properly credentialled; (3) the HMO concerned has an adequate quality assurance program; (3) the HMO concerned has an adequate utilization review program so that providers are neither overloaded nor underutilized, and that the frquency of services and procedures are approximately what would be expected and, if not, what reasons there might be for deviations from the expected. Additionally (4) DoI will have information about the costs of services, their use, outcomes etc as recommended by HEDIS - the guidelines of the Health Plan Employer Data and Information Set. Finally; (5) SH 932 gives the Commissioner of Insurance the same kind of enforcement powers and the power to revoke licenses of HMO's which already apply to other insurers. Again: this is a badly neede consumer protection bill.

Henry A. Landsberger, SLC

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Testimony before the Senate commerce Committee in Support of
S.B. 935 -Utilization Review and Grievances

My name is Henry Landsberger and I am a member of the AARP's State Legislative Committee. The American Association of Retired Persons - which has over 800,000 members in this state - asks this Committee to report favorably also on S.B. 935.

The bill assures that a fair appeals and grievance procedure is in place. It requires that the HMO informs the enrolled person what the complaints procedure is; and requires the insurer and HMO to spell out the grounds for a negative decision; it requires that later stages of the process are independent of the insurer; and it protects the experts - physicians and others - who are involved in it both from lawsuits and from other forms or retaliation for calling the shots as they see them.

All of these are simple matters of assuring impartiality and fairness: characteristics which we require in all walks of life. They are particularly important for older persons who are among those who are least able to protect themselves.

AARP

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Testimony to the Senate Commerce Committee in Support of S.B. 933 - Health Insurance Coverage/Networks

Summary: The American Association of Retired Persons - which has over 800,000 members in this state - asks this Committee to report favorably also on S.B. 933. Like SB 932, SB9323 further protects the consumer-member of an HMO and again, for the most part without having the HMO to incur additional expense. Many sections require HMO's to do no more than to furnish either the potential member, or the Department of Insurance with information already available within the the organization. Some parts of the bill may minimally increase costs. But that's an inevitable part of protecting those who are in need of care. Protection does not come free any this field.

Specifically: AARP favors: (1) "The prudent lay-person standard" for evaluating whether a person was justified in having recourse to emergency services, since experts may well not be available in an emergency. (2) We favor members having the right to go outside the HMO provider network if the HMO network has no appropriate provider, and a limit on the penalty if the member wishes to go outside the network even if there is an appropriate provider. Many older persons need to stay with a physician to whom they are accustomed. (3) For older persons, the provision that providers cannot be excluded from its network because they have an undue proportion of high-risk patients is especially important. (4) Older persons who are thinking of joining an HMO, and compare one HMO with another must, like all consumers, have full information about the services provided and the conditions under which they are provided. (5) allowing those in Continuing Care Communities to use the health providers on those premises.

We are totally in favor of this bill but if in this version, as compared with earlier versions of this bill, provisions have been dropped: (1) that propective enrollees be provided, on request, with a sample health plan; (2) the requirement that HMO's provide the Department of Insurance with a provider access plan, then it would be good if at some future time, these matters were taken care of. They should not interfere with reporting favorably on this bill. Hey A. Ladd Sr SLC member

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 933

Short Title: Health Ins/Coverage & Netwks. (Public)

Sponsors: Senator Perdue.

Referred to: Commerce.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH STANDARDS FOR COVERAGE AND PROVIDER NETWORKS UNDER HEALTH INSURANCE POLICIES AND MANAGED CARE PLANS.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-200. Miscellaneous insurance and managed care coverage and network provisions.**

(a) Definitions. -- As used in this section:

(1) 'Health benefit plan' means any of the following if offered by an insurer: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident.

b. Credit.

c. Disability income.

d. Long-term or nursing home care.

e. Medicare supplement.

f. Specified disease.
g. Dental or vision.
h. Coverage issued as a supplement to liability insurance.
i. Workers' compensation.
j. Medical payments under automobile or homeowners insurance.
k. Hospital income or indemnity.
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(2) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter.

(b) Medical Necessity. -- An insurer that limits its health benefit plan coverage to medically necessary services and supplies shall define 'medically necessary services or supplies' in its health benefit plan as those covered services or supplies that are:

(1) Provided for the diagnosis, treatment, cure, or relief of a health condition, illness, injury, or disease.
(2) Necessary for and appropriate to the symptoms, diagnosis, treatment, cure, or relief of a health condition, illness, injury, or disease.
(3) Within generally accepted standards of medical care in the community.
(4) Not solely for the convenience of the insured, the insured's family, or the provider.

For medically necessary services, nothing in this subsection precludes an insurer from comparing the cost-effectiveness of alternative services or supplies when determining which of the services or supplies will be covered, if conditions of coverage state that services and supplies must also be cost-effective.

If an insurer or its authorized representative determines that services, supplies, or other items are covered under its health benefit plan, including any determination under G.S. 58-50-61, the insurer shall not subsequently retract its determination after the services, supplies, or other items have been provided or reduce payments for a service, supply, or other item furnished in reliance on such a determination, unless the determination was based on a material misrepresentation about the covered person's health condition which was knowingly made by the provider of the service, supply, or other item.

(c) Emergency Services. -- When conducting utilization review or making a determination for coverage of emergency services:

(1) An insurer shall cover emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of those services if a prudent lay person acting reasonably would

have believed that an emergency medical condition existed. With respect to care obtained from a health care provider that does not have a contract with the insurer, the insurer shall cover emergency services necessary to screen and stabilize an insured and shall not require prior authorization of those services if a prudent lay person acting reasonably would have believed that an emergency medical condition existed and use of a provider contracting with the insurer would result in a delay that would worsen the emergency.

(2) An insurer shall cover emergency services if a contracting health care provider or an authorized representative of the carrier recommended that the covered person obtain the emergency services.

(3) If an insurer authorizes emergency services, it shall not subsequently retract its authorization after the emergency services have been provided, or reduce payment for an item or service furnished in reliance on the authorization, unless the authorization was based on a material misrepresentation about the insured's health condition that was made by the emergency services provider, the insured, or the insured's representative.

(4) Nothing in this subsection precludes coverage of emergency services being made subject to applicable coinsurance, copayments, and deductibles as specified in the health benefit plan.

(5) Nothing in this subsection precludes an insurer from establishing authorization procedures for the coverage of services after an emergency medical condition either has been found not to exist or has been stabilized.

(6) To facilitate review and treatment authorization for postevaluation and poststabilization services, an insurer shall provide access to an authorized representative 24 hours per day, seven days per week.

As used in this subsection: 'Emergency services' means health care items and services, furnished or required to evaluate and treat an emergency medical condition until such condition is stabilized, including ambulance services and ancillary services routinely available to the emergency department. 'Emergency medical condition' means the sudden and, at the time, unexpected onset of a health condition that requires immediate medical attention, where failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy. 'Stabilized' means, with respect to an emergency medical condition, that the emergency medical condition has resolved or that no material deterioration of the condition is likely, within reasonable medical probability, to result from the omission of immediate further care or result from or occur during the transfer from one facility to another.

(d) Provider Network Access Plans. -- This subsection and subsections (e) through (g) of this section apply to insurers that write health benefit plans that require or encourage members to use selected health care providers in return for additional benefits or higher levels of coverage. Beginning with the 1998 calendar year, insurers shall annually file a provider network access plan with the Commissioner no later than February 1 of the same calendar year. The access plan shall be in a format prescribed by the Commissioner and shall include:

(1) The provider network for the health benefit plan.

(2) The procedures used for making or denying referrals within and outside the network, including the procedures used when no appropriate provider is reasonably available, as determined under subsection (e) of this section.

(3) The process used for monitoring and assuring on an ongoing basis the ability of the network to deliver covered services to insureds, including a discussion of at least the following factors: provider-covered person ratios by specialty, geographic accessibility, waiting times for appointments with participating providers, hours of operation, and the accessibility of technological and specialty services available to meet appropriately the special needs of covered persons requiring technologically advanced or specialty care.

(4) The efforts to address the needs of insureds with limited English proficiency and literacy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities.

(5) The method used for assessing the health care needs of insureds and their satisfaction with services.

(6) The method used for informing insureds of the plan's services and features, including the plan's appeal and grievance procedures, process for choosing and changing providers, and procedures for providing and approving emergency and specialty care.

(7) The method used for ensuring the coordination and continuity of care for insureds referred to specialty physicians, for insureds using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning.

(8) The method used for allowing insureds to change primary care providers.

(9) The proposed plan for providing continuity of care in the event of contract termination between the insurer and any of its participating providers, or in the event of the insurer's insolvency or other inability to continue operations of the health benefit plan.

(10) Any other information required by the Commissioner.

Effective January 1, 1998, every insurer shall file an access plan with the Commissioner before offering a new health benefit plan and shall file an update to an existing access plan with the Commissioner whenever there are material changes in

the access plan. Effective January 1, 1998, insurers shall make the access plans available on their business premises and shall provide them to any insured upon request. Effective January 1, 1999, every insurer shall annually file with the Commissioner a performance report related to the targets specified in its network access plan for the previous year, with the report due by February 1 each year.

(e) Services Outside Provider Networks. -- No insurer shall penalize or subject an insured to less favorable benefits or coverage unless contracting health care providers able to meet health needs of the insured are reasonably available to the insured without unreasonable delay. No insurer shall reduce payment for a service provided by a provider outside of the insurer's provider network more than twenty percent (20%) of the payment that would be made to a provider in the insurer's network for the same service.

(f) Nondiscrimination Against High-Risk Populations. -- No insurer shall establish provider selection or contract renewal standards or procedures that are designed to avoid or otherwise have the effect of avoiding enrolling high-risk populations by excluding providers because they are located in geographic areas that contain high-risk populations; or because they treat or specialize in treating populations that present a risk of higher than average claims or health care services utilization. This subsection does not prohibit an insurer from declining to select a provider who fails to meet other legitimate selection criteria.

(g) Continuing Care Retirement Community Residents. -- If an insured is a resident of a continuing care retirement community regulated under Article 64 of this Chapter, the insurer shall provide the insured the option to receive approved service in the continuing care retirement community that serves as the insured's primary residence. This option is available only if the continuing care retirement community has available or can make arrangements to provide the needed service, and the continuing care retirement community is willing to accept the contract rate that has been negotiated with similar service providers for the same services and supplies. Those services include skilled nursing care, rehabilitative and other therapy services, and postacute care as needed.

(h) Information For Prospective Insureds. -- At the request of a prospective insured, an insurer shall provide that person with a sample copy of its health benefit plan.

(i) No insurer shall deny payment for covered services when those services are provided without any required preauthorization, precertification, or concurrent or prospective review if the provider reasonably believed that the patient's health condition could be further harmed by any delay in the provision of those services."

Section 2. This act applies to all health benefit plans that are delivered, issued for delivery, or renewed on and after October 1, 1997. For the purposes of this act, renewal of a health benefit plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

Section 3. This act becomes effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 934

Short Title: Preferred Provider Amendments. (Public)

Sponsors: Senator Perdue.

Referred to: Commerce.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REWRITE AND MODERNIZE THE LAWS ON PREFERRED HEALTH CARE PROVIDERS, PREFERRED PROVIDER ORGANIZATIONS, AND PREFERRED PROVIDER BENEFIT PLANS.

The General Assembly of North Carolina enacts:

Section 1. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-56. Preferred provider organizations and benefit plans.**

(a) Definitions. -- As used in this section:

(1) 'Insurer' means an insurer or service corporation subject to this Chapter.

(2) 'Preferred provider' means health care provider who has agreed to accept special reimbursement or other terms for health care services from an insurer for health care services on a fee-for-service basis. A 'preferred provider' is not a health care provider participating in any prepaid health service or capitation arrangement implemented or administered by the Department of Human Resources or its representatives.

(3) 'Preferred provider benefit plan' means a health benefit plan offered by an insurer in which both of the following features are present:

a. Utilization review or quality management programs are used to manage the provision of covered health care services; and

b. Enrollees are given incentives through benefit differentials to limit the receipt of covered health care services to those furnished by participating providers; and health care services are provided by preferred providers under a contract pursuant to G.S. 58-50-55.

(4) 'Preferred provider organization' or 'PPO' means an insurer holding contracts with preferred providers to be used by or offered to insurers offering preferred provider benefit plans.

(b) Insurers may enter into preferred provider contracts or enter into other cost containment arrangements approved by the Commissioner to reduce the costs of providing health care services. These contracts or arrangements may be entered into with licensed health care providers of all kinds without regard to specialty of services or limitation to a specific type of practice.

(c) At the initial offering of a preferred provider plan to the public, health care providers may submit proposals for participation in accordance with the terms of the preferred provider plan within 30 days after that offering. After that time period, any health care provider may submit a proposal, and the insurer offering the preferred provider benefit plan shall consider all pending applications for participation and give reasons for any rejections or failure to act on an application on at least an annual basis. Any health care provider seeking to participate in the preferred provider benefit plan, whether upon the initial offering or subsequently, may be permitted to do so in the discretion of the insurer offering the preferred provider benefit plan. The second and third paragraphs of G.S. 58-50-30(a) apply to preferred provider benefit plans.

(d) Any provision of a contract between an insurer offering a preferred provider benefit plan and a health care provider that restricts the provider's right to enter into preferred provider contracts with other persons is prohibited, is void ab initio, and is not enforceable. The existence of that restriction does not invalidate any other provision of the contract.

(e) Except where specifically prohibited either by this section or by rules adopted by the Commissioner, the contractual terms and conditions for special reimbursements shall be those that the parties find mutually agreeable.

(f) Every PPO shall provide all of the preferred providers with whom it holds contracts information about all of the insurers with whom the PPO does business and the insurers' preferred provider benefit plans. This information shall include for each insurer and preferred provider benefit plan the benefit designs and incentives that are used to encourage insureds to use preferred providers.

(g) The Commissioner may adopt rules applicable to insurers offering preferred provider benefit plans under this section. These rules shall provide for:

(1) Accessibility of preferred provider services to individuals within the insured group.

(2) The adequacy of the number and locations of health care providers.

(3) The availability of services at reasonable times.

(4) Financial solvency.

(h) Each insurer offering a preferred provider benefit plan shall provide the Commissioner with summary data about the financial reimbursements offered to health care providers. All such persons or insurers shall disclose annually the following information:

(1) The name by which the preferred provider benefit plan is known and its business address.

(2) The name, address, and nature of any PPO or other separate organization that administers the preferred provider benefit plan for the insurer.

(3) The names and addresses of all health care providers designated by the PPO as preferred providers; and the terms of the agreements entered into with those providers.

(4) Any other information necessary to determine compliance with this section, rules adopted under this section, or other requirements applicable to preferred provider benefit plans.

(i) A person enrolled in a preferred provider benefit plan may obtain covered health care services from a provider who does not participate in the plan. The preferred provider benefit plan may limit the coverage for health care services obtained from a provider who does not participate in the plan, except that payments for services rendered by a nonparticipating provider may not be reduced by more than twenty percent (20%) of the payment that would be made to a participating provider for the same service. This percentage limitation shall not require any waiver of copayments or waiver of deductibles in determining payments for services rendered by nonparticipating providers. Preferred provider benefit plans shall provide for payment for services rendered by nonparticipating providers. Except as provided in this subsection, this payment may differ from that provided to participating providers in the discretion of the person or insurer offering the preferred provider health benefit plan.

(j) A list of the current participating providers in the geographic area in which a substantial portion of health care services will be available shall be provided to insureds and contracting parties.

(k) Publications or advertisements of preferred provider benefit plans or organizations shall not refer to the quality or efficiency of the services of nonparticipating providers."

Section 2. Article 63 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-63-70. Health care service discount practices by insurers and service corporations.**

(a) It is an unfair trade practice for any insurer or service corporation subject to this Chapter to make an intentional misrepresentation to a health care provider to the effect that the insurer or service corporation is entitled to a certain preferred provider or other discount off the fees charged for medical services, procedures, or supplies provided by the health care provider, when the insurer or service corporation is not

entitled to any discount or is entitled to a lesser discount from the provider on those fees.

(b) It is an unfair trade practice for any person with knowledge that an insurer or service corporation intends to make the type of misrepresentation prohibited in subsection (a) of this section to provide substantial assistance to that insurer or service corporation in accomplishing that misrepresentation."

Section 3. G.S. 58-51-57(a) reads as rewritten:

"(a) Every policy or contract of accident or health insurance, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1992, shall provide coverage for pap smears and for low-dose screening mammography. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for pap smears and low-dose screening mammography."

Section 4. G.S. 58-51-58(a) reads as rewritten:

"(a) Every policy or contract of accident and health insurance, and every preferred ~~provider contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, shall provide coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer."

Section 5. G.S. 58-51-59(a) reads as rewritten:

"(a) No policy or contract of accident or health insurance, and no preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, and that provides coverage for prescribed drugs approved by the federal Food and Drug Administration for the treatment of certain types of cancer shall exclude coverage of any drug on the basis that the drug has been prescribed for the treatment of a type of cancer for which the drug has not been approved by the federal Food and Drug Administration. The drug, however, must be approved by the federal Food and Drug Administration and must have been proven effective and accepted for the treatment of the specific type of cancer for which the drug has been prescribed in any one of the following established reference compendia:

(1) The American Medical Association Drug Evaluations;

(2) The American Hospital Formulary Service Drug Information; or

(3) The United States Pharmacopeia Drug Information."

Section 6. G.S. 58-65-92(a) reads as rewritten:

"(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued,

renewed, or amended on or after January 1, 1992, shall provide coverage for pap smears and for low-dose screening mammography. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the certificate or contract shall apply to coverage for pap smears and low-dose screening mammography."

Section 7. G.S. 58-65-93(a) reads as rewritten:

"(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, shall provide coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the certificate or contract shall apply to coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer."

Section 8. G.S. 58-65-94(a) reads as rewritten:

"(a) No insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and no preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, and that provides coverage for prescribed drugs approved by the federal Food and Drug Administration for the treatment of certain types of cancer shall exclude coverage of any drug on the basis that the drug has been prescribed for the treatment of a type of cancer for which the drug has not been approved by the federal Food and Drug Administration. The drug, however, must be approved by the federal Food and Drug Administration and must have been proven effective and accepted for the treatment of the specific type of cancer for which the drug has been prescribed in any one of the following established reference compendia:

(1) The American Medical Association Drug Evaluations;

(2) The American Hospital Formulary Service Drug Information; or

(3) The United States Pharmacopeia Drug Information."

Section 9. G.S. 58-50-65(a) reads as rewritten:

"(a) ~~Nothing in Articles 50 through 55 of this Chapter shall apply to or affect any policy of liability or workers' compensation insurance, except that the provisions of G.S. 58-50-50 and subsections (b) and (c) of G.S. 58-50-55 shall apply to policies of workers' compensation insurance.~~ Except for G.S. 58-50-56, nothing in Articles 50 through 55 of this Chapter applies to liability or workers' compensation insurance policies."

Section 10. G.S. 90-14.13 reads as rewritten:

"**§ 90-14.13. Reports of disciplinary action by health care institutions; immunity from liability.**

The chief administrative officer of every licensed hospital or other health care institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5,

preferred providers, as defined in ~~G.S. 58-50-50,~~ G.S. 58-50-56, and all other provider organizations that issue credentials to physicians who practice medicine in the State, shall, after consultation with the chief of staff of such institution, report to the Board any revocation, suspension, or limitation of a physician's privileges to practice in that institution. Each such institution shall also report to the Board resignations from practice in that institution by persons licensed under this Article. The Board shall report all violations of this subsection known to it to the licensing agency for the institution involved.

Any licensed physician who does not possess professional liability insurance shall report to the Board any award of damages or any settlement of any malpractice complaint affecting his or her practice within 30 days of the award or settlement.

The chief administrative officer of each insurance company providing professional liability insurance for physicians who practice medicine in North Carolina, the administrative officer of the Liability Insurance Trust Fund Council created by G.S. 116-220, and the administrative officer of any trust fund operated by a hospital authority, group, or provider shall report to the Board within 30 days:

(1) Any award of damages or settlement affecting or involving a physician it insures, or

(2) Any cancellation or nonrenewal of its professional liability coverage of a physician, if the cancellation or nonrenewal was for cause.

The Board may request details about any action and the officers shall promptly furnish the requested information. The reports required by this section are privileged and shall not be open to the public. The Board shall report all violations of this paragraph to the Commissioner of Insurance.

Any person making a report required by this section shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false."

Section 11. G.S. 135-39.5(12) reads as rewritten:

"(12) Determining basis of payments to health care providers, including payments in accordance with ~~G.S. 58-50-55.~~ G.S. 58-50-56."

Section 12. G.S. 58-65-140 is repealed.

Section 13. G.S. 58-50-50 and G.S. 58-50-55 are repealed.

Section 14. Any administrative rules that were adopted by the Commissioner under the authority of G.S. 58-50-50 or G.S. 58-50-55 and that were effective before October 1, 1997, are not affected by the repeals in Section 13 of this act.

Section 15. This act becomes effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA SENATE
COMMITTEE SUBSTITUTE

SESSION 1997

JUN 10 1997

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ADOPTED

SENATE BILL 932
~~Proposed~~ Committee Substitute S932-PCS8721
Commerce Committee Substitute Adopted 6/10/97

Short Title: HMO Operations. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH HEALTH BENEFIT PLAN REPORTING AND DISCLOSURE REQUIREMENTS AND MAKE IMPROVEMENTS IN THE OPERATIONS OF HEALTH MAINTENANCE ORGANIZATIONS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-210. Health plan reporting and disclosure requirements.**

(a) Definitions. -- As used in this section:

(1) 'Health benefit plan' means any of the following if offered by an insurer: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident
b. Credit
c. Disability income
d. Long-term or nursing home care

e. Medicare supplement
f. Specified disease
g. Dental or vision
h. Coverage issued as a supplement to liability insurance
i. Workers' compensation
j. Medical payments under automobile or homeowners
k. Hospital income or indemnity
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(2) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter.

(b) Each insurer shall annually, on or before April 1 of each year, file in the office of the Commissioner the following information and reports relating to its activities in the previous calendar year, to the extent applicable. All information and reports shall be in a format prescribed by or acceptable to the Commissioner:

(1) A report on the availability and accessibility of each of its provider networks offered, which shall include:

a. Information on the insurer's program to determine the level of network availability, as measured by the numbers and types of network providers, required to provide covered services to covered persons. This information shall include the insurer's methodology for:

1. Establishing performance targets for the numbers and types of providers by specialty, area of practice, or facility type, for each of the following categories: primary care physicians, specialty care physicians, nonphysician health care providers, hospitals, and nonhospital health care facilities.
2. Determining when changes in plan membership will necessitate changes in the provider network.

The report shall also include: the availability performance targets for the previous and current years; the numbers and types of providers currently participating in the insurer's provider network; and an evaluation of actual plan performance against performance targets.

b. The insurer's method for arranging or providing health care services from nonnetwork providers, both within and outside of its service area, when network providers are not available to provide covered services.

c. Information on the insurer's program to determine the level of provider network accessibility necessary to serve its membership. This information shall include the insurer's methodology for establishing performance targets for member access to covered services from primary care physicians, specialty care physicians, nonphysician health care providers, hospitals, and nonhospital health care facilities. The methodology shall establish targets for:

1. The proximity of network providers to members, as measured by member driving distance, to access primary care, specialty care, hospital-based services, and services of nonhospital facilities.
2. Expected waiting time for appointments for urgent care, acute care, specialty care, and routine services for prevention and wellness.

The report shall also include: the accessibility performance targets for the previous and current years; data on actual overall accessibility as measured by driving distance and average appointment waiting time; and an evaluation of actual plan performance against performance targets. Measures of actual accessibility may be developed using scientifically valid random sample techniques.

d. A statement of the insurer's methods and standards for determining whether in-network services are reasonably available and accessible to a covered person, for the purpose of determining whether a covered person should receive the in-network level of coverage for services received from a nonnetwork provider.

e. A description of the insurer's program to monitor the adequacy of its network availability and accessibility methodologies and performance targets, plan performance, and network provider performance.

(2) A report of grievances for the previous calendar year, as defined in G.S. 58-50-61 and processed in accordance with G.S. 58-50-62. The report shall include number of covered lives, total number of grievances categorized by reason for the grievance, the number of grievances referred to the second level grievance review, the number of grievances resolved at each level and their resolution, and a description of the actions that are being taken to correct the problems that have been identified through grievances received. Every insurer shall file with the Commissioner, as part of its annual grievance report, a certificate of compliance stating that the carrier has established and follows, for each of its lines of business, grievance procedures that comply with G.S. 58-50-62.

(3) A report summarizing its utilization review program activities for the previous calendar year. The report shall include the number of: each type of utilization review performed, noncertifications for each type of review, each type of review appealed, and appeals settled in favor of covered persons. The report shall be accompanied by a certification from the carrier that it has established and follows procedures that comply with G.S. 58-50-61.

(4) A report showing the number of participants and groups who terminated coverage under the plan in the previous calendar year, which includes the number of participants who terminated coverage because the group contract under which they were covered was terminated, the number of participants who terminated coverage for reasons other than the termination of the group under which they were enrolled, and the number of group contracts terminated.

(5) A report showing the number of changes in provider network. The report shall detail the number of provider contracts that were terminated during the previous calendar year, showing voluntary and involuntary terminations separately, and the number of provider contracts that were added to the network. This subdivision does not require the disclosure of any identifying information about a provider, and no civil liability shall arise from compliance with this subdivision.

(6) A report listing the types of methods of provider compensation utilized in its provider contracts, such as: capitation arrangements; discounted fee-for-service; salary; and withhold or incentive arrangements.

(c) Each health benefit plan shall provide its prospective insureds upon request its evidence of coverage (G.S. 58-67-50), subscriber contract (G.S. 58-65-60, G.S. 58-65-140), health insurance policy (G.S. 58-51-80, 58-50-125, 58-50-55), or the contract and benefit summary of any other type of health benefit plan written by the insurer.

(d) Effective April 1, 1998, insurers shall make the reports that are required under subsection (b) of this section and that have been filed with the Commissioner available on their business premises and shall provide any insured access to them upon request."

Section 2. Article 67 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-67-11. Additional HMO application information.**

(a) In addition to the information filed under G.S. 58-67-10(c), each application shall include a description of the following:

(1) The program to be used to evaluate whether the applicant's provider network is sufficient, in numbers and types of providers, to assure that all health care services will be accessible without unreasonable delay.

(2) The program to be used for verifying provider credentials.
(3) The quality management program to assure quality of care and health care services managed and provided through the health care plan.
(4) The utilization review program for the review and control of health care services provided or paid for.
(5) The applicant's provider network and evidence of the ability of that network to provide all health care services to the applicant's prospective enrollees.

(b) G.S. 58-67-10(d) applies to the information specified in this section."

Section 3. G.S. 58-67-50(e) reads as rewritten:

"(e) Effective January 1, 1989, every health maintenance organization shall provide at least minimum cost and utilization information for group contracts of 100 or more subscribers on an annual basis when requested by the group. Such information shall be compiled in accordance with the Data Collection Form developed by the Standardized HMO Date Form Task Force as endorsed by the Washington Business Group on Health and the Group Health Association of America on November 19, 1986, and any subsequent amendments. In addition, beginning with data for the calendar year 1998, every HMO, for group contracts of 1,000 or more members, shall provide cost, use of service, prevention, outcomes, and other group-specific data as collected in accordance with the latest edition of the Health Plan Employer Data and Information Set (HEDIS) guidelines, as published by the National Committee for Quality Assurance. Beginning with data for the calendar year 1998, every HMO shall file with the Commissioner and make available to all employer groups, not later than July 1 of the following calendar year, a report of health benefit plan-wide experience on its costs, use of services, and other aspects of performance, in the HEDIS format."

Section 4. G.S. 58-67-100 reads as rewritten:

"**§ 58-67-100. Examinations.**

(a) The Commissioner may make an examination of the affairs of any health maintenance organization and the contracts, agreements or other arrangements pursuant to its health care plan as often as ~~he~~ the Commissioner deems it necessary for the protection of the interests of the people of this State but not less frequently than once every three years. Examinations shall otherwise be conducted under G.S. 58-2-131, 58-2-132, and 58-2-133.

~~(b) Every health maintenance organization shall submit its books and records relating to the health care plan to such examinations and in every way facilitate them. For the purpose of examinations, the Commissioner may administer oaths to, and examine the officers and agents of the health maintenance organization concerning their business.~~

(c) Repealed by Session Laws 1995, c. 360, s. 2(m).

(d) ~~In lieu of such~~ Instead of conducting an examination, the Commissioner may accept the report of an examination made by the ~~Commissioner of Insurance or Commissioner of Public Health~~ HMO regulator of another state."

Section 5. G.S. 58-67-140 reads as rewritten:

"**§ 58-67-140. Suspension or revocation of ~~certificate of authority.~~ license.**

(a) The Commissioner may ~~suspend or revoke any certificate of authority issued to a health maintenance organization under this Article if he finds that any of the following conditions exist: suspend, revoke, or refuse to renew~~ suspend or revoke any HMO license if the Commissioner finds that the HMO:

(1) ~~The health maintenance organization is~~ Is operating significantly in contravention of its basic organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted under G.S. 58-67-10, unless amendments to such submissions have been filed with and approved by the Commissioner.

(2) ~~The health maintenance organization issues evidence~~ Issues evidences of coverage or uses a schedule of premiums for health care services ~~which~~ that do not comply with ~~the requirements of~~ G.S. 58-67-50.

(3) ~~The health maintenance organization no~~ No longer maintains the financial reserve specified in G.S. 58-67-40 or is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(4) ~~The health maintenance organization, or any person on its behalf, has~~ Has itself or through any person on its behalf advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner.

(5) ~~The continued operation of the health maintenance organization~~ Is operating in a manner that would be hazardous to its enrollees.

(6) ~~The health maintenance organization has otherwise failed to substantially comply with this Article.~~ Knowingly or repeatedly fails or refuses to comply with any law or rule applicable to the HMO or with any order issued by the Commissioner after notice and opportunity for a hearing.

(7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted under G.S. 58-3-210.

(b) A ~~certificate of authority~~ license shall be suspended or revoked only after compliance with ~~the requirements of~~ G.S. 58-67-155.

(c) When ~~the certificate of authority of a health maintenance organization~~ an HMO license is suspended, the ~~health maintenance organization~~ HMO shall not, during the ~~period of such~~ suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or ~~solicitation whatsoever.~~ solicitation.

(d) When ~~the certificate of authority of a health maintenance organization~~ an HMO license is revoked, ~~such organization~~ the HMO shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct

no further business except as may be essential to the orderly conclusion of the affairs of ~~such organization.~~ the HMO. ~~It~~ The HMO shall engage in no advertising or ~~solicitation whatsoever.~~ solicitation. The Commissioner may, by written order, permit such further operation of the ~~organization as he~~ HMO as the Commissioner may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage."

Section 6. This act becomes effective January 1, 1998.

SENATE
COMMITTEE SUBSTITUTE
JUN 10 1997
ADOPTED

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 933
Proposed Committee Substitute S933-PCS8722

Short Title: Health Ins/Coverage & Netwks. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH STANDARDS FOR COVERAGE AND PROVIDER NETWORKS UNDER HEALTH INSURANCE POLICIES AND MANAGED CARE PLANS.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-200. Miscellaneous insurance and managed care coverage and network provisions.**

(a) Definitions. -- As used in this section:

(1) 'Health benefit plan' means any of the following if written by an insurer: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident.

b. Credit.

c. Disability income.

d. Long-term or nursing home care.

e. Medicare supplement.
f. Specified disease.
g. Dental or vision.
h. Coverage issued as a supplement to liability insurance.
i. Workers' compensation.
j. Medical payments under automobile or homeowners insurance.
k. Hospital income or indemnity.
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(2) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter.

(b) Medical Necessity. -- An insurer that limits its health benefit plan coverage to medically necessary services and supplies shall define 'medically necessary services or supplies' in its health benefit plan as those covered services or supplies that are:

(1) Provided for the diagnosis, treatment, cure, or relief of a health condition, illness, injury, or disease; and not for experimental, investigational, or cosmetic purposes.
(2) Necessary for and appropriate to the diagnosis, treatment, cure, or relief of a health condition, illness, injury, disease, or its symptoms.
(3) Within generally accepted standards of medical care in the community.
(4) Not solely for the convenience of the insured, the insured's family, or the provider.

For medically necessary services, nothing in this subsection precludes an insurer from comparing the cost-effectiveness of alternative services or supplies when determining which of the services or supplies will be covered.

(c) Coverage Determinations. -- If an insurer or its authorized representative determines that services, supplies, or other items are covered under its health benefit plan, including any determination under G.S. 58-50-61, the insurer shall not subsequently retract its determination after the services, supplies, or other items have been provided or reduce payments for a service, supply, or other item furnished in reliance on such a determination, unless the determination was based on a material misrepresentation about the insured's health condition that was knowingly made by the insured or the provider of the service, supply, or other item.

(d) Services Outside Provider Networks. -- No insurer shall penalize an insured or subject an insured to the out-of-network benefit levels offered under the insured's approved health benefit plan unless contracting health care providers able to meet health needs of the insured are reasonably available to the insured without unreasonable delay.

(e) Nondiscrimination Against High-Risk Populations. -- No insurer shall establish provider selection or contract renewal standards or procedures that are designed to avoid or otherwise have the effect of avoiding enrolling high-risk populations by excluding providers because they are located in geographic areas that contain high-risk populations or because they treat or specialize in treating populations that present a risk of higher than average claims or health care services utilization. This subsection does not prohibit an insurer from declining to select a provider or from not renewing a contract with a provider who fails to meet the insurer's selection criteria.

(f) Continuing Care Retirement Community Residents. -- As used in this subsection, 'Medicare benefits' means medical and health products, benefits, and services used in accordance with Title XVIII of the Social Security Act. If an insured with coverage for Medicare benefits or similar benefits under a plan for retired federal government employees is a resident of a continuing care retirement community regulated under Article 64 of this Chapter, and the insured's primary care physician determines that it is medically necessary for the insured to be referred to a skilled nursing facility upon discharge from an acute care facility, the insurer shall not require that the insured relocate to a skilled nursing facility outside the continuing care retirement community if the continuing care retirement community:

(1) Is a Medicare certified skilled nursing facility.

(2) Agrees to be reimbursed at the insurer's contract rate negotiated with similar providers for the same services and supplies.

(3) Agrees not to bill the insured for fees over and above the insurer's contract rate.

(4) Meets all guidelines established by the insurer related to quality of care, including:

a. Quality assurance programs that promote continuous quality improvement.

b. Standards for performance measurement for measuring and reporting the quality of health care services provided to insureds.

c. Utilization review, including compliance with utilization management procedures.

d. Confidentiality of medical information.

e. Insured grievances and appeals from adverse treatment decisions.

f. Nondiscrimination.

(5) Agrees to comply with the insurer's procedures for referral authorization, risk assumption, use of insurer services, and other criteria applicable to providers under contract for the same services and supplies.

A continuing care retirement community that satisfies subdivisions (1) through (5) of this subsection shall not be obligated to accept, as a skilled nursing facility, any patient other than a resident of the continuing care retirement community and

neither the insurer nor the retirement community shall be allowed to list or otherwise advertise the skilled nursing facility as a participating network provider for Medicare benefits for anyone other than residents of the continuing care retirement community."

Section 2. Chapter 58 of the General Statutes is amended by adding the following new section to read:

"**§ 58-3-205. Coverage required for emergency care.**

(a) As used in this section, the term:

(1) 'Emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity, including but not limited to severe pain, or by acute symptoms developing from a chronic medical condition that would lead a prudent lay person, possessing an average knowledge of health and medicine, to reasonably expect the absence of immediate medical attention to result in any of the following:

a. Placing the health of an individual, or, with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

b. Serious impairment to bodily functions.

c. Serious dysfunction of any bodily organ or part.

(2) 'Emergency services' means health care items and services furnished or required to screen for and treat an emergency medical condition until the condition is stabilized, including prehospital care and ancillary services routinely available to the emergency department.

(3) 'Health benefit plan' means any of the following if written by an insurer: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident.

b. Credit.

c. Disability income.

d. Long-term or nursing home care.

e. Medicare supplement.

f. Specified disease.

g. Dental or vision.

h. Coverage issued as a supplement to liability insurance.

i. Workers' compensation.

j. Medical payments under automobile or homeowners insurance.
k. Hospital income or indemnity.
l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(4) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter.

(5) 'Stabilize' means to provide medical care that is appropriate to prevent a material deterioration of the person's condition, within reasonable medical probability, in accordance with the HCFA (Health Care Financing Administration) interpretative guidelines, policies, and regulations pertaining to responsibilities of hospitals in emergency cases (as provided in the Emergency Medical Treatment and Labor Act, 42 U.S.C.S. § 1395dd), including medically necessary services and supplies to maintain stabilization of the person until the person is transferred.

(b) Every insurer shall provide coverage for emergency services at least to the extent necessary to screen and to stabilize the insured and shall not require prior authorization of the services if a prudent lay person acting reasonably would have believed that an emergency medical condition existed. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms.

(c) With respect to emergency services provided by a health care provider who is not under contract with the insurer, the services shall be covered if:

(1) A prudent lay person acting reasonably would have believed that a delay would worsen the emergency; or

(2) The insured did not seek services from a provider under contract with the insurer because of circumstances beyond the control of the insured.

(d) If an insurer has given prior authorization for emergency services, then the insurer shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the insured's health condition knowingly made by the provider of the emergency services or by the insured.

(e) Coverage of emergency services shall be subject to coinsurance, co-payments, and deductibles applicable under the health benefit plan. An insurer shall not impose cost-sharing for emergency services provided under this section that differs from the cost-sharing that would have been imposed if the physician or provider furnishing the services were a provider contracting with the insurer.

(f) Both the emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite post-evaluation or post-stabilization services in order to avoid material deterioration of the insured's condition within a reasonable clinical confidence, or, with respect to a pregnant woman, to avoid material deterioration of the condition of the unborn child within a reasonable clinical confidence.

(g) Insurers shall provide information to their insureds on all of the following:

(1) Coverage of emergency medical services.

(2) The appropriate use of emergency services, including the use of the '911' system and other telephone access systems utilized to access prehospital emergency services.

(3) Any cost-sharing provisions for emergency medical services.

(4) The process and procedures for obtaining emergency services, so that insureds are familiar with the location of in-plan emergency departments and with the location and availability of other in-plan settings at which insureds may receive medical care."

Section 3. This act applies to all health benefit plans that are delivered, issued for delivery, or renewed on and after January 1, 1998. For the purposes of this act, renewal of a health benefit plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

Section 4. This act becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

SENATE COMMITTEE SUBSTITUTE
JUN 10 1997
ADOPTED

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SENATE BILL 934
Proposed Committee Substitute S934-PCS8719
Commerce Committee Substitute Adopted 6/10/97

Short Title: Preferred Provider Amendments. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REWRITE AND MODERNIZE THE LAWS ON INSURERS OFFERING PREFERRED PROVIDER BENEFIT PLANS, PREFERRED PROVIDER ORGANIZATIONS, AND PREFERRED PROVIDER BENEFIT PLANS.

The General Assembly of North Carolina enacts:

Section 1. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-56. Insurers, preferred provider organizations, and preferred provider benefit plans.**

(a) Definitions. -- As used in this section:

(1) 'Insurer' means an insurer or service corporation subject to this Chapter.

(2) 'Preferred provider' means a health care provider who has agreed to accept special reimbursement or other terms for health care services from an insurer for health care services on a fee-for-service basis. A 'preferred provider' is not a health care provider participating in any prepaid health service or capitation arrangement implemented or administered by the Department of Human Resources or its representatives.

(3) 'Preferred provider benefit plan' means a health benefit plan offered by an insurer in which both of the following features are present:

a. Utilization review or quality management programs are used to manage the provision of covered health care services; and

b. Enrollees are given incentives through benefit differentials to limit the receipt of covered health care services to those furnished by participating providers, and health care services are provided by preferred providers under a contract pursuant to this section.

(4) 'Preferred provider organization' or 'PPO' means an insurer holding contracts with preferred providers to be used by or offered to insurers offering preferred provider benefit plans.

(b) Insurers may enter into preferred provider contracts or enter into other cost containment arrangements approved by the Commissioner to reduce the costs of providing health care services. These contracts or arrangements may be entered into with licensed health care providers of all kinds without regard to specialty of services or limitation to a specific type of practice.

(c) At the initial offering of a preferred provider plan to the public, health care providers may submit proposals for participation in accordance with the terms of the preferred provider plan within 30 days after that offering. After that time period, any health care provider may submit a proposal, and the insurer offering the preferred provider benefit plan shall consider all pending applications for participation and give reasons for any rejections or failure to act on an application on at least an annual basis. Any health care provider seeking to participate in the preferred provider benefit plan, whether upon the initial offering or subsequently, may be permitted to do so in the discretion of the insurer offering the preferred provider benefit plan. The second and third paragraphs of G.S. 58-50-30(a) apply to preferred provider benefit plans.

(d) Any provision of a contract between an insurer offering a preferred provider benefit plan and a health care provider that restricts the provider's right to enter into preferred provider contracts with other persons is prohibited, is void ab initio, and is not enforceable. The existence of that restriction does not invalidate any other provision of the contract.

(e) Except where specifically prohibited either by this section or by rules adopted by the Commissioner, the contractual terms and conditions for special reimbursements shall be those that the parties find mutually agreeable.

(f) Every insurer offering a preferred provider benefit plan and contracting with a PPO shall require by contract that the PPO shall provide all of the preferred providers with whom it holds contracts information about the insurer and the insurer's preferred provider benefit plans. This information shall include for each insurer and preferred provider benefit plan the benefit designs and incentives that are used to encourage insureds to use preferred providers.

(g) The Commissioner may adopt rules applicable to insurers offering preferred provider benefit plans under this section. These rules shall provide for:

(1) Accessibility of preferred provider services to individuals within the insured group.
(2) The adequacy of the number and locations of health care providers.
(3) The availability of services at reasonable times.
(4) Financial solvency.

(h) Each insurer offering a preferred provider benefit plan shall provide the Commissioner with summary data about the financial reimbursements offered to health care providers. All such insurers shall disclose annually the following information:

(1) The name by which the preferred provider benefit plan is known and its business address.
(2) The name, address, and nature of any PPO or other separate organization that administers the preferred provider benefit plan for the insurer.
(3) The terms of the agreements entered into by the insurer with preferred providers.
(4) Any other information necessary to determine compliance with this section, rules adopted under this section, or other requirements applicable to preferred provider benefit plans.

(i) A person enrolled in a preferred provider benefit plan may obtain covered health care services from a provider who does not participate in the plan. The preferred provider benefit plan may limit the coverage for health care services obtained from a provider who does not participate in the plan, except that payments for services rendered by a nonparticipating provider may not be reduced by more than twenty percent (20%) of the payment that would be made to a participating provider for the same service. This percentage limitation shall not require any waiver of copayments or waiver of deductibles in determining payments for services rendered by nonparticipating providers. Preferred provider benefit plans shall provide for payment for services rendered by nonparticipating providers. Except as provided in this subsection, this payment may differ from that provided to participating providers in the discretion of the person or insurer offering the preferred provider health benefit plan.

(j) A list of the current participating providers in the geographic area in which a substantial portion of health care services will be available shall be provided to insureds and contracting parties.

(k) Publications or advertisements of preferred provider benefit plans or organizations shall not refer to the quality or efficiency of the services of nonparticipating providers."

Section 2. Article 63 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-63-70. Health care service discount practices by insurers and service corporations.**

(a) It is an unfair trade practice for any insurer or service corporation subject to this Chapter to make an intentional misrepresentation to a health care provider to the effect that the insurer or service corporation is entitled to a certain preferred provider or other discount off the fees charged for medical services, procedures, or supplies provided by the health care provider, when the insurer or service corporation is not entitled to any discount or is entitled to a lesser discount from the provider on those fees.

(b) It is an unfair trade practice for any person with knowledge that an insurer or service corporation intends to make the type of misrepresentation prohibited in subsection (a) of this section to provide substantial assistance to that insurer or service corporation in accomplishing that misrepresentation."

Section 3. G.S. 58-51-57(a) reads as rewritten:

"(a) Every policy or contract of accident or health insurance, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1992, shall provide coverage for pap smears and for low-dose screening mammography. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for pap smears and low-dose screening mammography."

Section 4. G.S. 58-51-58(a) reads as rewritten:

"(a) Every policy or contract of accident and health insurance, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, shall provide coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer."

Section 5. G.S. 58-51-59(a) reads as rewritten:

"(a) No policy or contract of accident or health insurance, and no preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, and that provides coverage for prescribed drugs approved by the federal Food and Drug Administration for the treatment of certain types of cancer shall exclude coverage of any drug on the basis that the drug has been prescribed for the treatment of a type of cancer for which the drug has not been approved by the federal Food and Drug Administration. The drug, however, must be approved by the federal Food and Drug Administration and must have been proven effective and accepted for the treatment of the specific type of cancer for which the drug has been prescribed in any one of the following established reference compendia:

(1) The American Medical Association Drug Evaluations;

(2) The American Hospital Formulary Service Drug Information; or

(3) The United States Pharmacopeia Drug Information."

Section 6. G.S. 58-65-92(a) reads as rewritten:

"(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1992, shall provide coverage for pap smears and for low-dose screening mammography. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the certificate or contract shall apply to coverage for pap smears and low-dose screening mammography."

Section 7. G.S. 58-65-93(a) reads as rewritten:

"(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, shall provide coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the certificate or contract shall apply to coverage for prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer."

Section 8. G.S. 58-65-94(a) reads as rewritten:

"(a) No insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and no preferred provider ~~contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55,~~ benefit plan under G.S. 58-50-56, that is issued, renewed, or amended on or after January 1, 1994, and that provides coverage for prescribed drugs approved by the federal Food and Drug Administration for the treatment of certain types of cancer shall exclude coverage of any drug on the basis that the drug has been prescribed for the treatment of a type of cancer for which the drug has not been approved by the federal Food and Drug Administration. The drug, however, must be approved by the federal Food and Drug Administration and must have been proven effective and accepted for the treatment of the specific type of cancer for which the drug has been prescribed in any one of the following established reference compendia:

(1) The American Medical Association Drug Evaluations;

(2) The American Hospital Formulary Service Drug Information; or

(3) The United States Pharmacopeia Drug Information."

Section 9. G.S. 58-50-65(a) reads as rewritten:

"(a) ~~Nothing in Articles 50 through 55 of this Chapter shall apply to or affect any policy of liability or workers' compensation insurance, except that the provisions of G.S. 58-50-50 and subsections (b) and (c) of G.S. 58-50-55 shall apply to policies of workers' compensation insurance.~~ Except for G.S. 58-50-56, nothing in Articles 50 through 55 of this Chapter applies to liability or workers' compensation insurance policies."

Section 10. G.S. 90-14.13 reads as rewritten:

"§ 90-14.13. Reports of disciplinary action by health care institutions; immunity from liability.

The chief administrative officer of every licensed hospital or other health care institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5, preferred providers, as defined in ~~G.S. 58-50-50,~~ G.S. 58-50-56, and all other provider organizations that issue credentials to physicians who practice medicine in the State, shall, after consultation with the chief of staff of such institution, report to the Board any revocation, suspension, or limitation of a physician's privileges to practice in that institution. Each such institution shall also report to the Board resignations from practice in that institution by persons licensed under this Article. The Board shall report all violations of this subsection known to it to the licensing agency for the institution involved.

Any licensed physician who does not possess professional liability insurance shall report to the Board any award of damages or any settlement of any malpractice complaint affecting his or her practice within 30 days of the award or settlement.

The chief administrative officer of each insurance company providing professional liability insurance for physicians who practice medicine in North Carolina, the administrative officer of the Liability Insurance Trust Fund Council created by G.S. 116-220, and the administrative officer of any trust fund operated by a hospital authority, group, or provider shall report to the Board within 30 days:

(1) Any award of damages or settlement affecting or involving a physician it insures, or

(2) Any cancellation or nonrenewal of its professional liability coverage of a physician, if the cancellation or nonrenewal was for cause.

The Board may request details about any action and the officers shall promptly furnish the requested information. The reports required by this section are privileged and shall not be open to the public. The Board shall report all violations of this paragraph to the Commissioner of Insurance.

Any person making a report required by this section shall be immune from any criminal prosecution or civil liability resulting therefrom unless such person knew the report was false or acted in reckless disregard of whether the report was false."

Section 11. G.S. 135-39.5(12) reads as rewritten:

"(12) Determining basis of payments to health care providers, including payments in accordance with ~~G.S. 58-50-55.~~ G.S. 58-50-56."

Section 12. G.S. 58-65-140 is repealed.

Section 13. G.S. 58-50-50 and G.S. 58-50-55 are repealed.

Section 14. Any administrative rules that were adopted by the Commissioner under the authority of G.S. 58-50-50 or G.S. 58-50-55 and that were effective before January 1, 1998, are not affected by the repeals in Section 13 of this act.

Section 15. This act becomes effective January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 935

Short Title: Mgd. Care/Utiliz. & Griev. (Public)

Sponsors: Senator Perdue.

Referred to: Judiciary.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH PROCEDURES AND RIGHTS FOR MANAGED CARE PLAN MEMBERS IN UTILIZATION REVIEW DECISIONS AND GRIEVANCES AGAINST MANAGED CARE ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-61. Utilization review.**

(a) Definitions. -- As used in this section and in G.S. 58-50-62, the term:

(1) 'Adverse determination' means a determination by a carrier or its designated utilization review organization that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the carrier's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated. An 'adverse determination' is not a decision rendered solely on the basis that the health benefit plan does not provide benefits for the health care service in question, if the exclusion of the specific service requested is clearly stated in the certificate of coverage.

(2) 'Carrier' means an insurance company, multiple employer welfare arrangement, health maintenance organization, or nonprofit hospital or medical service corporation that contracts or offers to

contract to arrange for, pay for, or reimburse any of the costs of health care services.

(3) 'Clinical peer' means a health care professional who holds an unrestricted license in a state of the United States, in the same or similar specialty, and routinely provides the health care services subject to utilization review.

(4) 'Clinical review criteria' means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a carrier to determine the necessity and appropriateness of health care services.

(5) 'Covered person' means a policyholder, subscriber, enrollee, or other individual covered by a health benefit plan. Unless specifically indicated otherwise, 'covered person' includes another person or a provider acting on behalf of a covered person.

(6) 'Emergency services' means health care items and services that are furnished or required to evaluate and treat an emergency medical condition until the condition has been resolved or no material deterioration of the condition is likely, within reasonable medical probability, to result from the omission of immediate further care or result from or occur during the transfer from one facility to another. 'Emergency services' includes ambulance services and ancillary services routinely available to the emergency department. As used in this subdivision, 'emergency medical condition' means the sudden and, at the time, unexpected onset of a health condition that requires immediate medical attention, where failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy.

(7) 'Facility' means an institution providing health care services, including hospitals and other licensed inpatient centers; ambulatory surgical or treatment centers; skilled nursing centers; residential treatment centers; diagnostic, laboratory, and imaging centers; and rehabilitation and other therapeutic health settings.

(8) 'Grievance' means a written complaint submitted by a covered person about any of the following:

a. A carrier's decisions, policies, or actions related to availability, delivery, or quality of health care services.

b. Claims payment or handling; or reimbursement for services.

c. The contractual relationship between a covered person and a carrier.

d. The outcome of an appeal of an adverse determination under this section.

(9) 'Health benefit plan' means a policy, contract, certificate, or agreement entered into, offered, or issued by a carrier to provide, deliver, arrange, pay for, or reimburse any of the costs of health care services.

(10) 'Health care professional' means a person authorized under Chapter 90 of the General Statutes to perform health care services.

(11) 'Health care services' means services provided for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(12) 'Managed care plan' means a health benefit plan in which a carrier either (i) requires a covered person to use or (ii) creates incentives, including financial incentives, for a covered person to use providers that are under contract with or managed, owned, or employed by the carrier.

(13) 'Participating provider' means a provider who, under a contract with a carrier or with a carrier's contractor or subcontractor, has agreed to provide health care services to covered persons in return for direct or indirect payment from the carrier, other than coinsurance, copayments, or deductibles.

(14) 'Provider' means a health care professional or a facility.

(15) 'Utilization review' means a set of formal techniques designed to monitor the use of or evaluate the clinical necessity, appropriateness, efficacy or efficiency of health care services, procedures, providers, or facilities. These techniques may include:

a. Ambulatory review. -- Utilization review of services performed or provided in an outpatient setting.

b. Case management. -- A coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions.

c. Certification. -- A determination by a carrier or its designated URO that an admission, availability of care, continued stay, or other service has been reviewed and, based on the information provided, satisfies the carrier's requirements for medical necessity, appropriateness, health care setting, level of care, and effectiveness.

d. Concurrent review. -- Utilization review conducted during a patient's hospital stay or course of treatment.

e. Discharge planning. -- The formal process for determining, before discharge from a facility, the coordination and management of the care that a patient receives after discharge from a facility.

f. Prospective review. -- Utilization review conducted before an admission or a course of treatment including any required preauthorization or precertification.

g. Retrospective review. -- Utilization review of medical necessity that is conducted after services have been provided to a patient, but not the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

h. Second opinion. -- An opportunity or requirement to obtain a clinical evaluation by a provider other than the provider originally making a recommendation for a proposed service to assess the clinical necessity and appropriateness of the proposed service.

(16) 'Utilization review organization' or 'URO' means an entity that conducts utilization review under a managed care plan, but does not mean a carrier performing utilization review for its own health benefit plan.

(b) Carrier Oversight. -- Every carrier shall monitor all utilization review carried out by or on behalf of the carrier and ensure compliance with this section. A carrier shall ensure that appropriate personnel have operational responsibility for the conduct of the carrier's utilization review program. If a carrier contracts to have a URO perform its utilization review, the carrier shall monitor the URO to ensure compliance with this section, which shall include:

(1) A written description of the URO's activities and responsibilities, including reporting requirements.

(2) Evidence of formal approval of the utilization review organization program by the carrier.

(3) A process by which the carrier evaluates the performance of the URO.

(c) Scope and Content of Program. -- Every carrier shall prepare and maintain a utilization review program document that describes all delegated and nondelegated review functions for covered services, including:

(1) Procedures to evaluate the clinical necessity, appropriateness, efficacy or efficiency of health services.

(2) Data sources and clinical review criteria used in decision making.

(3) The process for conducting appeals of adverse determinations.

(4) Mechanisms to ensure consistent application of review criteria and compatible decisions.

(5) Data collection processes and analytical methods used in assessing utilization of health care services.

(6) Provisions for assuring confidentiality of clinical and patient information in accordance with State and federal law.

(7) The organizational structure (e.g., utilization review committee, quality assurance or other committee) that periodically assesses utilization review activities and reports to the carrier's governing body.

(8) The staff position functionally responsible for day-to-day program management.

(9) The methods of collection and assessment of data about underutilization and overutilization of health care services and how the assessment is used to evaluate and improve procedures and criteria for utilization review.

Not later than April 1 of each year, every carrier shall file with the Commissioner a report summarizing its utilization review program activities for the previous calendar year. The report shall include the number of: each type of utilization review performed, adverse determinations for each type of review, each type of review appealed, and appeals settled in favor of covered persons. The report shall be accompanied by a certification from the carrier that it has established and maintains procedures that comply with this section.

(d) Program Operations. -- In every utilization review program, a carrier or URO shall use documented clinical review criteria that are based on sound clinical evidence and that are periodically evaluated to assure ongoing efficacy. A carrier may develop its own clinical review criteria or purchase or license clinical review criteria. Qualified health care professionals shall administer the utilization review program and oversee review decisions under the direction of a medical doctor. Clinical peers shall evaluate the clinical appropriateness of adverse determinations. Compensation to persons involved in utilization review shall not contain any direct or indirect incentives for them to make any particular review decisions. Compensation to utilization reviewers shall not be directly or indirectly based on the number or type of adverse determinations they render. In issuing a utilization review decision, a carrier shall: Obtain all information required to make the decision, including pertinent clinical information; employ a process to ensure that utilization reviewers apply clinical review criteria consistently; and issue the decision in a timely manner pursuant to this section.

(e) Carrier Responsibilities. -- Every carrier shall:

(1) Routinely assess the effectiveness and efficiency of its utilization review program.

(2) Use data systems that are sufficient to support utilization review program activities and to generate management reports to enable the carrier to monitor and manage services effectively.

(3) Coordinate the utilization review program with its other medical management activity, including quality assurance, credentialing, provider contracting, data reporting, grievance procedures, processes for assessing satisfaction of covered persons, and risk management.

(4) Provide covered persons with access to its review staff by a toll-free or collect call telephone number whenever any provider is required to be available to provide services which may require prior certification to any plan enrollee and take corrective action when necessary. Every carrier shall annually publish its standards

for telephone accessibility as well as the carrier's compliance with those standards.

(5) Limit its requests for information to only that information that is necessary to certify the admission, procedure or treatment, length of stay, and frequency and duration of health care services.

(6) Have written procedures for making utilization review decisions and for notifying covered persons of those decisions.

(7) Have written procedures to address the failure or inability of a provider or covered person to provide all necessary information for review. If a provider or covered person fails to release necessary information in a timely manner, the carrier may deny certification.

(f) Prospective and Concurrent Reviews. -- As used in this subsection, 'necessary information' includes the results of any patient examination, clinical evaluation, or second opinion that may be required. Prospective and concurrent determinations shall be made by a carrier within two business days after the carrier obtains all necessary information about the admission, procedure, or health care service. If a carrier certifies a health care service, the carrier shall notify the covered person's provider by telephone within one business day after making the certification; and shall provide written or electronic confirmation of the telephone notification to the covered person and the provider within two business days after making the certification. The written notification shall include the number of days certified and, if a concurrent review, the number of extended days or next review date, the new total number of days or covered services approved, and the date of admission or initiation of health care services. For an adverse determination, the carrier shall notify the covered person's provider by telephone within one business day after making the determination; and provide written or electronic confirmation of the determination within two business days after making the determination. In concurrent reviews, the carrier shall remain liable for the health care services until the covered person has been notified of the determination and until all appeals and remedies available to the covered person have been exhausted.

(g) Retrospective Reviews. -- As used in this subsection, 'necessary information' includes the results of any patient examination, clinical evaluation, or second opinion that may be required. For retrospective review determinations, a carrier shall make the determination within 30 days after receiving all necessary information. For a certification, the carrier may give written notification to the covered person. For an adverse determination, the carrier shall give written notification to the covered person within five business days after making the adverse determination.

(h) Notice of Adverse Determination.-- A written notification of an adverse determination shall include all reasons for the determination, including the clinical rationale, the instructions for initiating a voluntary appeal or reconsideration of the determination, and the instructions for requesting a written statement of the clinical review criteria used to make the determination. A carrier shall provide the clinical rationale in writing for an adverse determination, including the clinical review

criteria used to make that determination, to any person who received the notification of the adverse determination and who follows the procedures for a request.

(i) Requests for Reconsideration. -- A carrier may establish procedures for informal reconsideration of adverse determinations. The reconsideration shall occur within one business day after the receipt of the request and shall be conducted between the covered person's provider and a clinical peer designated by the carrier. If the reconsideration process does not resolve the difference of opinion, the adverse determination may be formally appealed by the covered person. A carrier shall not require a covered person to participate in an informal reconsideration before the covered person may appeal an adverse determination under subsection (j) of this section.

(j) Appeals of Adverse Determinations. -- Every carrier shall have written procedures for appeals of adverse determinations by covered persons, including expedited review to address a situation where the time frames for the standard review procedures set forth in this section would reasonably appear to seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function. Appeals shall be evaluated by clinical peers who were not involved in the adverse determinations.

(k) Nonexpedited Appeals. -- For standard, nonexpedited appeals, the carrier shall give written notification of the decision to the covered person and the covered person's provider within 30 days after the request for an appeal. The written decision shall contain:

(1) The qualifying credentials of the person or persons reviewing the appeal.

(2) A statement of the reviewers' understanding of the reason for the covered person's appeal.

(3) The reviewers' decision in clear terms and the medical rationale in sufficient detail for the covered person to respond further to the carrier's position.

(4) A reference to the evidence or documentation that is the basis for the decision, including the clinical review criteria used to make the determination, and instructions for requesting the clinical review criteria.

(5) A statement advising the covered person of the covered person's right to request a second level grievance review and a description of the procedure for submitting a second-level grievance under G.S. 58-51-62.

(l) Expedited Appeals. -- An expedited appeal of an adverse determination may be requested by a covered person only when a nonexpedited appeal will cause a delay in the rendering of health care services that would be detrimental to the health of the covered person. The carrier may request documentation of the medical justification for the expedited appeal. The carrier shall provide expedited review by a clinical peer and communicate its decision to the covered person as soon as possible but not later than four days after receiving information justifying expedited review.

All necessary information, including the carrier's decision, shall be transmitted between the carrier and the covered person by the most expeditious method available. If the expedited review is a concurrent review determination, the carrier shall remain liable for the coverage of the health care services until the covered person has been notified of the determination. Every carrier shall provide written confirmation of its decision in an expedited review within two business days after providing notification of that decision if the initial notification was not in writing. The written decision shall contain the provisions specified in subsection (k) of this section. A carrier is not required to provide an expedited review for retrospective adverse determinations.

(m) Disclosure Requirements. -- In the certificate of coverage and member handbook provided to covered persons, a carrier shall include a clear and comprehensive description of its utilization review procedures, including the procedures for appealing adverse determinations and a statement of the rights and responsibilities of covered persons, including the voluntary nature of the appeal process, with respect to those procedures. A carrier shall include a summary of its utilization review procedures in materials intended for prospective covered persons. A carrier shall print on its membership cards a toll-free telephone number to call for utilization review purposes.

(n) Maintenance of Records. -- Every carrier and URO shall maintain records of review procedures; the health care qualifications of the entity's staff; the criteria used by the entity to make its decisions; a record of review complaints received; a record of the number and type of noncertifications; a record of the number and outcome of any appeals; and the procedures to ensure confidentiality of medical records and personal information. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to carriers. These records shall be retained by the carrier and URO for a period of three years or until the next general examination by the Commissioner, whichever is later.

(o) Violation. -- A violation of this section subjects a carrier to G.S. 58-2-70."

Section 2. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-62. Carrier grievance procedures.**

(a) Purpose and Intent. -- The purpose of this section is to provide standards for the establishment and maintenance of procedures by carriers to assure that covered persons have the opportunity for the appropriate resolution of their grievances.

(b) Availability of Grievance Process. -- Every carrier shall have a grievance process whereby covered persons may voluntarily request reviews of decisions, policies, and actions of the carrier. The grievance process shall provide for first- and second-level reviews of grievances; except that an appeal of an adverse determination that has been reviewed under G.S. 58-50-61 shall be reviewed as a second level grievance under this section.

(c) Grievance Procedures. -- Every carrier shall have written procedures for receiving and resolving grievances from covered persons. Every carrier shall file with

the Commissioner, as part of its annual report required by subsection (d) of this section, a certificate of compliance stating that the carrier has, for each of its lines of business, grievance procedures that comply with this section. A description of the grievance procedures shall be set forth in or attached to the certificate of coverage and member handbook provided to covered persons. The description shall include a statement informing the covered person that the grievance procedures are voluntary and shall also inform the covered person about the availability of the Commissioner's office for assistance, including the telephone number and address of the office.

(d) Grievance Register. -- Every carrier shall keep a written register for each calendar year that documents all first- and second-level grievances received during that calendar year. For each grievance, the register shall contain at least a general description of the reason for the grievance; the date received; the date of each review or hearing; the resolution and date of resolution at each level of the grievance; and the name of the covered person for whom the grievance was filed. The register shall be maintained in a manner that is accessible to the Commissioner. The carrier shall retain each register for three years or until the Commissioner has adopted a final report of an examination that contains a review of the register for that calendar year, whichever is later. On or before April 1 of each year, every carrier shall file a report with the Commissioner in a format prescribed by the Commissioner. The report shall include the number of covered lives, the total number of grievances, a brief description of each grievance, the number of grievances referred to the second-level grievance review, the number of grievances resolved at each level and their resolution, and a description of the actions that are being taken to correct the problems that have been identified.

(e) First-Level Grievance Review. -- A grievance may be submitted by a covered person. A carrier shall issue a written decision to the covered person within 30 days after receiving a grievance. The person or persons reviewing the grievance shall not be the same person or persons who initially handled the matter that is the subject of the grievance. The carrier does not have to allow a covered person to attend the first-level grievance review. A covered person may submit written material. Within three business days after receiving a grievance, the carrier shall provide the covered person with the name, address, and telephone number of the coordinator and information on how to submit written material. The written decision issued in a first-level grievance review shall contain:

(1) The qualifying credentials of the person or persons reviewing the grievance.

(2) A statement of the reviewers' understanding of the grievance.

(3) The reviewers' decision in clear terms and the contractual basis or medical rationale in sufficient detail for the covered person to respond further to the carrier's position.

(4) A reference to the evidence or documentation used as the basis for the decision.

(5) A statement advising the covered person of his or her right to request a second-level grievance review and a description of the

procedure for submitting a second-level grievance under G.S. 58-51-62.

(f) Second-Level Grievance Review. -- A carrier shall establish a second-level grievance review process for covered persons who are dissatisfied with the first-level grievance review decision or a utilization review appeal decision. A carrier shall, within three business days after receiving a grievance, make known to the covered person:

(1) The name, address, and telephone number of a person designated to coordinate the grievance review for the carrier.

(2) A statement of a covered person's rights, which include the right to request and receive from a carrier all information relevant to the case; attend the second-level grievance review; present his or her case to the review panel; submit supporting materials before and at the review meeting; ask questions of any representative of the carrier; and be assisted or represented by a person of his or her choice. A carrier shall convene a second-level grievance review panel for each request. The panel shall comprise persons who were not previously involved in any matter giving rise to the second-level grievance, are not employees of the carrier or URO, and do not have a financial interest in the outcome of the review. A person who was previously involved in the matter may appear before the panel to present information or answer questions. All of the persons reviewing a grievance involving an adverse determination shall be health care professionals who have appropriate expertise, including when a clinical decision is involved, at least one clinical peer.

(g) Second-Level Procedures. -- A carrier's procedures for conducting a second-level panel review shall include:

(1) The review panel shall schedule and hold a review meeting within 45 days after receiving a request for a second-level review.

(2) The review meeting shall be held at a location reasonably accessible to the covered person.

(3) If a carrier is notified in advance that the covered person will not attend the review meeting, the carrier shall offer the covered person the opportunity to communicate with the review panel, at the carrier's expense, by conference call.

(4) The covered person shall be notified in writing at least 15 days before the review meeting date.

(5) The carrier shall allow a covered person at least one postponement of the review meeting. A postponed review meeting shall be rescheduled as soon as possible, but shall not be held more than 45 days after receipt of the postponement request.

(6) The covered person may be represented by a private attorney at the review meeting, in which case the carrier may also be represented by an attorney at that meeting.

(7) The covered person's right to a full review shall not be conditioned on the covered person's appearance at the review meeting.

(h) Second-Level Review Decisions. -- A carrier shall issue a written decision to the covered person within five business days after completing the review meeting. The decision shall include:

(1) The qualifying credentials of the members of the review panel.

(2) A statement of the review panel's understanding of the nature of the grievance and all pertinent facts.

(3) The review panel's recommendation to the carrier and the rationale behind that recommendation.

(4) A description of or reference to the evidence or documentation considered by the review panel in making the recommendation.

(5) In the review of an adverse determination, a written statement of the clinical rationales, including the clinical review criteria, that were used by the review panel to make the recommendation.

(6) The rationale for the carrier's decision if it differs from the review panel's recommendation.

(7) A statement that the decision is the carrier's final determination in the matter.

(8) Notice of the availability of the Commissioner's office for assistance, including the telephone number and address of the Commissioner's office.

(i) Expedited Second-Level Procedures. -- An expedited second-level review shall be made available where medically justified as provided in G.S. 58-50-61(l), whether or not the initial review was expedited. The provisions of subsections (f), (g), and (h) of this section apply to this subsection except for the following timetable: When a covered person is eligible for an expedited second-level review, the carrier shall conduct the review proceeding and communicate its decision within four days after receiving all necessary information. The review meeting may take place by way of a telephone conference call or through the exchange of written information.

(j) No carrier shall discriminate against any provider based on any action taken by the provider under this section on behalf of a covered person."

Section 3. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-63. Utilization review and grievance review immunities.**

A person who reviews appeals under G.S. 58-50-61 or G.S. 58-50-62 or a member of a duly appointed grievance review panel under G.S. 58-50-62 who acts without malice or fraud is not subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the provisions of G.S. 58-50-61 or G.S. 58-50-62."

Section 4. G.S. 58-50-65(a) reads as rewritten:

"(a) Nothing in Articles 50 through 55 of this Chapter applies to or affects any policy of liability or workers' compensation insurance, except that the provisions of G.S. 58-50-50 and subsections (b) and (c) of G.S. 58-50-55 through G.S. 58-50-61 and rules adopted under those sections, except where otherwise addressed under the laws and rules of the Industrial Commission, shall apply to policies of workers' compensation insurance."

Section 5. G.S. 58-3-102 and G.S. 58-50-60 are repealed.

Section 6. This act becomes effective January 1, 1998.

SENATE
COMMITTEE SUBSTITUTE
JUN 10 1997
ADOPTED 2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 935
Proposed Committee Substitute S935-PCS7813
Commerce Committee Substitute Adopted 6/10/97

Short Title: Mgd. Care/Utiliz. & Griev. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH PROCEDURES AND RIGHTS FOR MANAGED CARE PLAN MEMBERS IN UTILIZATION REVIEW DECISIONS AND GRIEVANCES AGAINST MANAGED CARE ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-61. Utilization review.**

(a) Definitions. -- As used in this section and in G.S. 58-50-62, the term:

(1) 'Clinical peer' means a health care professional who holds an unrestricted license in a state of the United States, in the same or similar specialty, and routinely provides the health care services subject to utilization review.

(2) 'Clinical review criteria' means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by an insurer to determine medically necessary services and supplies.

(3) 'Covered person' means a policyholder, subscriber, enrollee, or other individual covered by a health benefit plan. 'Covered person' includes another person, other than the covered person's provider, who is authorized to act on behalf of a covered person.

(4) 'Emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity

including, but not limited to, severe pain, or by acute symptoms developing from a chronic medical condition that would lead a prudent layperson, possessing an average knowledge of health and medicine, to reasonably expect the absence of immediate medical attention to result in any of the following:

a. Placing the health of an individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

b. Serious impairment to bodily functions.

c. Serious dysfunction of any bodily organ or part.

(5) 'Emergency services' means health care items and services furnished or required to screen for and treat an emergency medical condition until the condition is stabilized, including prehospital care and ancillary services routinely available to the emergency department.

(6) 'Grievance' means a written complaint submitted by a covered person about any of the following:

a. An insurer's decisions, policies, or actions related to availability, delivery, or quality of health care services.

b. Claims payment or handling; or reimbursement for services.

c. The contractual relationship between a covered person and an insurer.

d. The outcome of an appeal of a noncertification under this section.

(7) 'Health benefit plan' means any of the following if offered by an insurer: an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; or a plan provided by a multiple employer welfare arrangement. 'Health benefit plan' does not mean any plan implemented or administered through the Department of Human Resources or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Accident

b. Credit

c. Disability income

d. Long-term or nursing home care

e. Medicare supplement

f. Specified disease

g. Dental or vision

h. Coverage issued as a supplement to liability insurance

i. Workers' compensation

j. Medical payments under automobile or homeowners

k. Hospital income or indemnity

l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

(8) 'Health care provider' means any person who is licensed, registered, or certified under Chapter 90 of the General Statutes; a health care facility as defined in G.S. 131E-176(9b); or a pharmacy.

(9) 'Health care services' means services provided for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(10) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter.

(11) 'Managed care plan' means a health benefit plan in which an insurer either (i) requires a covered person to use or (ii) creates incentives, including financial incentives, for a covered person to use providers that are under contract with or managed, owned, or employed by the insurer.

(12) 'Medically necessary services or supplies' means those covered services or supplies that are:

a. Provided for the diagnosis, treatment, cure, or relief of a health condition, illness, injury, or disease.

b. Not for experimental, investigational, or cosmetic purposes.

c. Necessary for and appropriate to the diagnosis, treatment, cure, or relief of a health condition, illness, injury, disease, or its symptoms.

d. Within generally accepted standards of medical care in the community.

e. Not solely for the convenience of the insured, the insured's family, or the provider.

For medically necessary services, nothing in this subdivision precludes an insurer from comparing the cost-effectiveness of alternative services or supplies when determining which of the services or supplies will be covered.

(13) 'Noncertification' means a determination by an insurer or its designated utilization review organization that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the insurer's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated. A 'noncertification' is not a decision rendered solely on the basis that the health benefit plan does not provide benefits

for the health care service in question, if the exclusion of the specific service requested is clearly stated in the certificate of coverage.

(14) 'Participating provider' means a provider who, under a contract with an insurer or with an insurer's contractor or subcontractor, has agreed to provide health care services to covered persons in return for direct or indirect payment from the insurer, other than coinsurance, copayments, or deductibles.

(15) 'Provider' means a health care provider.

(16) 'Stabilize' means to provide medical care that is appropriate to prevent a material deterioration of the person's condition, within reasonable medical probability, in accordance with the HCFA (Health Care Financing Administration) interpretative guidelines, policies, and regulations pertaining to responsibilities of hospitals in emergency cases (as provided under the Emergency Medical Treatment and Labor Act, 42 U.S.C.S. § 1395dd), including medically necessary services and supplies to maintain stabilization of the person until the person is transferred.

(17) 'Utilization review' means a set of formal techniques designed to monitor the use of or evaluate the clinical necessity, appropriateness, efficacy or efficiency of health care services, procedures, providers, or facilities. These techniques may include:

a. Ambulatory review. -- Utilization review of services performed or provided in an outpatient setting.

b. Case management. -- A coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions.

c. Certification. -- A determination by an insurer or its designated URO that an admission, availability of care, continued stay, or other service has been reviewed and, based on the information provided, satisfies the insurer's requirements for medically necessary services and supplies, appropriateness, health care setting, level of care, and effectiveness.

d. Concurrent review. -- Utilization review conducted during a patient's hospital stay or course of treatment.

e. Discharge planning. -- The formal process for determining, before discharge from a provider facility, the coordination and management of the care that a patient receives after discharge from a provider facility.

f. Prospective review. -- Utilization review conducted before an admission or a course of treatment including any required preauthorization or precertification.

g. Retrospective review. -- Utilization review of medically necessary services and supplies that is conducted after services have been provided to a patient, but not the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

h. Second opinion. -- An opportunity or requirement to obtain a clinical evaluation by a provider other than the provider originally making a recommendation for a proposed service to assess the clinical necessity and appropriateness of the proposed service.

(18) 'Utilization review organization' or 'URO' means an entity that conducts utilization review under a managed care plan, but does not mean an insurer performing utilization review for its own health benefit plan.

(b) Insurer Oversight. -- Every insurer shall monitor all utilization review carried out by or on behalf of the insurer and ensure compliance with this section. An insurer shall ensure that appropriate personnel have operational responsibility for the conduct of the insurer's utilization review program. If an insurer contracts to have a URO perform its utilization review, the insurer shall monitor the URO to ensure compliance with this section, which shall include:

(1) A written description of the URO's activities and responsibilities, including reporting requirements.

(2) Evidence of formal approval of the utilization review organization program by the insurer.

(3) A process by which the insurer evaluates the performance of the URO.

(c) Scope and Content of Program. -- Every insurer shall prepare and maintain a utilization review program document that describes all delegated and nondelegated review functions for covered services including:

(1) Procedures to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health services.

(2) Data sources and clinical review criteria used in decision making.

(3) The process for conducting appeals of noncertifications.

(4) Mechanisms to ensure consistent application of review criteria and compatible decisions.

(5) Data collection processes and analytical methods used in assessing utilization of health care services.

(6) Provisions for assuring confidentiality of clinical and patient information in accordance with State and federal law.

(7) The organizational structure (e.g., utilization review committee, quality assurance, or other committee) that periodically assesses utilization review activities and reports to the insurer's governing body.

(8) The staff position functionally responsible for day-to-day program management.

(9) The methods of collection and assessment of data about underutilization and overutilization of health care services and how the assessment is used to evaluate and improve procedures and criteria for utilization review.

(d) Program Operations. -- In every utilization review program, an insurer or URO shall use documented clinical review criteria that are based on sound clinical evidence and that are periodically evaluated to assure ongoing efficacy. An insurer may develop its own clinical review criteria or purchase or license clinical review criteria. Qualified health care professionals shall administer the utilization review program and oversee review decisions under the direction of a medical doctor. A medical doctor shall evaluate the clinical appropriateness of noncertifications. Compensation to persons involved in utilization review shall not contain any direct or indirect incentives for them to make any particular review decisions. Compensation to utilization reviewers shall not be directly or indirectly based on the number or type of noncertifications they render. In issuing a utilization review decision, an insurer shall: obtain all information required to make the decision, including pertinent clinical information; employ a process to ensure that utilization reviewers apply clinical review criteria consistently; and issue the decision in a timely manner pursuant to this section.

(e) Insurer Responsibilities. -- Every insurer shall:

(1) Routinely assess the effectiveness and efficiency of its utilization review program.

(2) Coordinate the utilization review program with its other medical management activity, including quality assurance, credentialing, provider contracting, data reporting, grievance procedures, processes for assessing satisfaction of covered persons, and risk management.

(3) Provide covered persons and their providers with access to its review staff by a toll-free or collect call telephone number whenever any provider is required to be available to provide services which may require prior certification to any plan enrollee. Every insurer shall establish standards for telephone accessibility and monitor telephone service as indicated by average speed of answer and call abandonment rate, on at least a month-by-month basis, to ensure that telephone service is adequate, and take corrective action when necessary.

(4) Limit its requests for information to only that information that is necessary to certify the admission, procedure or treatment, length of stay, and frequency and duration of health care services.

(5) Have written procedures for making utilization review decisions and for notifying covered persons of those decisions.

(6) Have written procedures to address the failure or inability of a provider or covered person to provide all necessary information for review. If a provider or covered person fails to release necessary information in a timely manner, the insurer may deny certification.

(f) Prospective and Concurrent Reviews. -- As used in this subsection, 'necessary information' includes the results of any patient examination, clinical evaluation, or second opinion that may be required. Prospective and concurrent determinations shall be communicated to the covered person's provider within three business days after the insurer obtains all necessary information about the admission, procedure, or health care service. If an insurer certifies a health care service, the insurer shall notify the covered person's provider. For a noncertification, the insurer shall notify the covered person's provider and send written or electronic confirmation of the noncertification to the covered person. In concurrent reviews, the insurer shall remain liable for health care services until the covered person has been notified of the noncertification.

(g) Retrospective Reviews. -- As used in this subsection, 'necessary information' includes the results of any patient examination, clinical evaluation, or second opinion that may be required. For retrospective review determinations, an insurer shall make the determination within 30 days after receiving all necessary information. For a certification, the insurer may give written notification to the covered person's provider. For a noncertification, the insurer shall give written notification to the covered person and the covered person's provider within five business days after making the noncertification.

(h) Notice of Noncertification. -- A written notification of a noncertification shall include all reasons for the noncertification, including the clinical rationale, the instructions for initiating a voluntary appeal or reconsideration of the noncertification, and the instructions for requesting a written statement of the clinical review criteria used to make the noncertification. An insurer shall provide the clinical review criteria used to make the noncertification to any person who received the notification of the noncertification and who follows the procedures for a request.

(i) Requests for Reconsideration. -- An insurer may establish procedures for informal reconsideration of noncertifications. The reconsideration shall be conducted between the covered person's provider and a medical doctor designated by the insurer. An insurer shall not require a covered person to participate in an informal reconsideration before the covered person may appeal a noncertification under subsection (j) of this section.

(j) Appeals of Noncertifications. -- Every insurer shall have written procedures for appeals of noncertifications by covered persons or their providers acting on their behalves, including expedited review to address a situation where the time frames for the standard review procedures set forth in this section would reasonably appear to seriously jeopardize the life or health of a covered person or jeopardize the covered person's ability to regain maximum function. Each appeal shall be evaluated by a medical doctor who was not involved in the noncertification.

(k) Nonexpedited Appeals. -- Within three business days after receiving a request for a standard, nonexpedited appeal, the insurer shall provide the covered person with the name, address, and telephone number of the coordinator and information on how to submit written material. For standard, nonexpedited appeals, the insurer shall give written notification of the decision to the covered person and the covered person's provider within 30 days after the insurer receives the request for an appeal. The written decision shall contain:

(1) The professional qualifications and licensure of the person or persons reviewing the appeal.

(2) A statement of the reviewers' understanding of the reason for the covered person's appeal.

(3) The reviewers' decision in clear terms and the medical rationale in sufficient detail for the covered person to respond further to the insurer's position.

(4) A reference to the evidence or documentation that is the basis for the decision, including the clinical review criteria used to make the determination, and instructions for requesting the clinical review criteria.

(5) A statement advising the covered person of the covered person's right to request a second-level grievance review and a description of the procedure for submitting a second-level grievance under G.S. 58-50-62.

(l) Expedited Appeals. -- An expedited appeal of a noncertification may be requested by a covered person or his or her provider acting on the covered person's behalf only when a nonexpedited appeal would reasonably appear to seriously jeopardize the life or health of a covered person or jeopardize the covered person's ability to regain maximum function. The insurer may require documentation of the medical justification for the expedited appeal. The insurer shall, in consultation with a medical doctor, provide expedited review, and the insurer shall communicate its decision in writing to the covered person and his or her provider as soon as possible, but not later than four days after receiving the information justifying expedited review. The written decision shall contain the provisions specified in subsection (k) of this section. If the expedited review is a concurrent review determination, the insurer shall remain liable for the coverage of health care services until the covered person has been notified of the determination. An insurer is not required to provide an expedited review for retrospective noncertifications.

(m) Disclosure Requirements. -- In the certificate of coverage and member handbook provided to covered persons, an insurer shall include a clear and comprehensive description of its utilization review procedures, including the procedures for appealing noncertifications and a statement of the rights and responsibilities of covered persons, including the voluntary nature of the appeal process, with respect to those procedures. An insurer shall include a summary of its utilization review procedures in materials intended for prospective covered persons.

An insurer shall print on its membership cards a toll-free telephone number to call for utilization review purposes.

(n) Maintenance of Records. -- Every insurer and URO shall maintain records of each review performed and each appeal received or reviewed, as well as documentation sufficient to demonstrate compliance with this section. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to insurers. These records shall be retained by the insurer and URO for a period of three years or until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later.

(o) Violation. -- A violation of this section subjects an insurer to G.S. 58-2-70."

Section 2. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-62. Insurer grievance procedures.**

(a) Purpose and Intent. -- The purpose of this section is to provide standards for the establishment and maintenance of procedures by insurers to assure that covered persons have the opportunity for appropriate resolutions of their grievances.

(b) Availability of Grievance Process. -- Every insurer shall have a grievance process whereby a covered person may voluntarily request a review of any decision, policy, or action of the insurer that affects that covered person. The grievance process may provide for an immediate informal consideration by the insurer of a grievance. If the insurer does not have a procedure for informal consideration or if an informal consideration does not resolve the grievance, the grievance process shall provide for first- and second-level reviews of grievances; except that an appeal of a noncertification that has been reviewed under G.S. 58-50-61 shall be reviewed as a second-level grievance under this section.

(c) Grievance Procedures. -- Every insurer shall have written procedures for receiving and resolving grievances from covered persons. A description of the grievance procedures shall be set forth in or attached to the certificate of coverage and member handbook provided to covered persons. The description shall include a statement informing the covered person that the grievance procedures are voluntary and shall also inform the covered person about the availability of the Commissioner's office for assistance, including the telephone number and address of the office.

(d) Maintenance of Records. -- Every insurer shall maintain records of each grievance received and the insurer's review of each grievance, as well as documentation sufficient to demonstrate compliance with this section. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to insurers. The insurer shall retain these records for three years or until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later.

(e) First-Level Grievance Review. -- A grievance may be submitted by a covered person or his or her provider acting on the covered person's behalf.

(1) The insurer does not have to allow a covered person to attend the first-level grievance review. A covered person may submit written material. Within three business days after receiving a grievance, the insurer shall provide the covered person with the name, address, and telephone number of the coordinator and information on how to submit written material.

(2) An insurer shall issue a written decision to the covered person and, if applicable, to the covered person's provider, within 30 days after receiving a grievance. The person or persons reviewing the grievance shall not be the same person or persons who initially handled the matter that is the subject of the grievance and, if the issue is a clinical one, at least one of whom shall be a medical doctor with appropriate expertise to evaluate the matter. The written decision issued in a first-level grievance review shall contain:

a. The professional qualifications and licensure of the person or persons reviewing the grievance.

b. A statement of the reviewers' understanding of the grievance.

c. The reviewers' decision in clear terms and the contractual basis or medical rationale in sufficient detail for the covered person to respond further to the insurer's position.

d. A reference to the evidence or documentation used as the basis for the decision.

e. A statement advising the covered person of his or her right to request a second-level grievance review and a description of the procedure for submitting a second-level grievance under this section.

(f) Second-Level Grievance Review. -- An insurer shall establish a second-level grievance review process for covered persons who are dissatisfied with the first-level grievance review decision or a utilization review appeal decision.

(1) An insurer shall, within 10 business days after receiving a request for a second-level grievance review, make known to the covered person:

a. The name, address, and telephone number of a person designated to coordinate the grievance review for the insurer.

b. A statement of a covered person's rights, which include the right to request and receive from an insurer all information relevant to the case; attend the second-level grievance review; present his or her case to the review panel; submit supporting materials before and at the review meeting; ask questions of any member of the review panel; and be assisted or represented by a person of his or her choice,

which person may be without limitation to: a provider, family member, employer representative, or attorney. If the covered person chooses to be represented by an attorney, the insurer may also be represented by an attorney.

(2) An insurer shall convene a second-level grievance review panel for each request. The panel shall comprise persons who were not previously involved in any matter giving rise to the second-level grievance, are not employees of the insurer or URO, and do not have a financial interest in the outcome of the review. A person who was previously involved in the matter may appear before the panel to present information or answer questions. All of the persons reviewing a second-level grievance involving a noncertification or a clinical issue shall be providers who have appropriate expertise, including at least one clinical peer. Provided, however, an insurer that uses a clinical peer on an appeal of a noncertification under G.S. 58-50-61 or on a first-level grievance review panel under this section may use one of the insurer's employees on the second-level grievance review panel in the same matter if the second-level grievance review panel comprises three or more persons.

(g) Second-Level Grievance Review Procedures. -- An insurer's procedures for conducting a second-level grievance review shall include:

(1) The review panel shall schedule and hold a review meeting within 45 days after receiving a request for a second-level review.

(2) The covered person shall be notified in writing at least 15 days before the review meeting date.

(3) The covered person's right to a full review shall not be conditioned on the covered person's appearance at the review meeting.

(h) Second-Level Grievance Review Decisions. -- An insurer shall issue a written decision to the covered person and, if applicable, to the covered person's provider, within seven business days after completing the review meeting. The decision shall include:

(1) The professional qualifications and licensure of the members of the review panel.

(2) A statement of the review panel's understanding of the nature of the grievance and all pertinent facts.

(3) The review panel's recommendation to the insurer and the rationale behind that recommendation.

(4) A description of or reference to the evidence or documentation considered by the review panel in making the recommendation.

(5) In the review of a noncertification or other clinical matter, a written statement of the clinical rationale, including the clinical

review criteria, that was used by the review panel to make the recommendation.

(6) The rationale for the insurer's decision if it differs from the review panel's recommendation.

(7) A statement that the decision is the insurer's final determination in the matter.

(8) Notice of the availability of the Commissioner's office for assistance, including the telephone number and address of the Commissioner's office.

(i) Expedited Second-Level Procedures. -- An expedited second-level review shall be made available where medically justified as provided in G.S. 58-50-61(1), whether or not the initial review was expedited. The provisions of subsections (f), (g), and (h) of this section apply to this subsection except for the following timetable: When a covered person is eligible for an expedited second-level review, the insurer shall conduct the review proceeding and communicate its decision within four days after receiving all necessary information. The review meeting may take place by way of a telephone conference call or through the exchange of written information.

(j) No insurer shall discriminate against any provider based on any action taken by the provider under this section or G.S. 58-50-61 on behalf of a covered person.

(k) Violation. -- A violation of this section subjects an insurer to G.S. 58-2-70."

Section 3. Article 1 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-21.22A. Medical review committees.**

(a) As used in this section, 'medical review committee' means a committee composed of health care providers licensed under this Chapter that is formed for the purpose of evaluating the quality of, cost of, or necessity for health care services, including provider credentialing. 'Medical review committee' does not mean a medical review committee established under G.S. 131E-95.

(b) A member of a duly appointed medical review committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(c) The proceedings of a medical review committee, the records and materials it produces, and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1 or G.S. 58-2-100; and shall not be subject to discovery or introduction into evidence in any civil action against a provider of health care services who directly provides services and is licensed under this Chapter or a hospital licensed under Chapter 122C or Chapter 131E of the General Statutes or that is owned or operated by the State, which civil action results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However,

information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. A member of the committee may testify in a civil action but cannot be asked about his or her testimony before the committee or any opinions formed as a result of the committee hearings.

(d) This section applies to a medical review committee, including a medical review committee appointed by one of the entities licensed under Articles 1 through 67 of Chapter 58 of the General Statutes.

(e) Subsection (c) of this section does not apply to proceedings initiated under G.S. 58-50-61 or G.S. 58-50-62."

Section 4. G.S. 58-50-65(a) reads as rewritten:

"(a) Nothing in Articles 50 through 55 of this Chapter applies to or affects any policy of liability or workers' compensation insurance, except that the provisions of G.S. 58-50-50 and subsections (b) and (c) of G.S. 58-50-55 through G.S. 58-50-61 and rules adopted under those sections, except where otherwise addressed under the laws and rules of the Industrial Commission, shall apply to policies of workers' compensation insurance."

Section 5. G.S. 58-50-60 is repealed.

Section 6. This act becomes effective January 1, 1998. Insurers other than health maintenance organizations that are subject to this act have until July 1, 1998, to implement the procedures for grievances that are contained in Section 2 of this act; provided, however, that insurers other than health maintenance organizations shall comply with the second-level grievance review procedures in Section 2 of this act for appeals of noncertifications effective January 1, 1998.

SUMMARY
DEPARTMENT OF INSURANCE MANAGED CARE BILLS

Bill Name (Short Title)	*Major Provisions*
SB 932 - Health Benefit Plan Operations Act	♦ Add requirement of health plan data reporting to DOI: report on provider network availability and accessibility, which includes the plan's targeted and actual network offered; summary utilization review activity, appeal, grievance information; summary of changes in plan enrollment and provider network; and summary information about the types of provider compensation employed ♦ Require carriers to provide a copy of their plan documents to prospective insureds, upon request ♦ Elaborate on requirements for HMO applications relating to quality assurance, utilization review, grievances, and provider network ♦ Update data reporting from HMOs to employer groups and require data on cost, utilization, preventive services, and outcomes (HEDIS) to be filed annually with DOI ♦ Apply all examination laws to HMO examinations ♦ Broaden DOI authority to take action on HMO licenses to make consistent with indemnity companies
SB 933 - Health Insurance Coverages and Networks Act	♦ Provide definition of medical necessity ♦ Require coverage for emergency services based on prudent lay person standard ♦ Provisions to address sufficiency of provider networks, including special provisions regarding when members must be allowed to use non-network providers and continuing care retirement communities ♦ Prohibit insurers and HMOs from discriminating against high-risk populations through systematic exclusion of their health care providers from the network
SB 934 - Preferred Provider Amendment	♦ Non-substantive changes to existing law in order to distinguish between carriers selling PPO benefit plans, provider networks, and PPO benefit plans (i.e., the policy) ♦ Provisions to address silent PPOs, by requiring carriers to inform providers about payors who will use the PPO network and the benefit design of each plan. ♦ Provisions to address the unauthorized taking of discounts on claims
SB 935 - Utilization Review and Grievances Act	♦ Strengthen current requirements regarding systems that plans use to perform utilization review ♦ Establish a uniform system for plans to consider plan member appeals and grievances regarding utilization review decisions and other plan policies, decisions, and actions. System calls for two levels of review by the plan and establishes member rights under each level. Informal consideration may be offered prior to initiating formal review. ♦ Apply utilization review requirements to workers compensation plans

THE NEWS & OBSERVER
WEDNESDAY, JUNE 11, 1997

Panel backs HMO reform

Sen. Beverly Perdue says the industry-backed legislation is intended to prevent managed-care 'horror stories.'

BY JENA HEATH
STAFF WRITER

Proposals designed to reform the way North Carolina's health-maintenance organizations operate swept through a Senate committee Tuesday.

The bills would require managed-care companies to report more information about their operations to the state insurance commissioner. They also would require companies to cover most emergency-room visits, make it easier for patients to see out-of-network doctors and fully explain the reasons for denying coverage.

"If these four bills become law I don't believe you'll have any of these horror stories we've heard," said Sen. Beverly Perdue, the New Bern Democrat sponsoring the industry-backed package. Officials at the state Department of Insurance also are backing the bills.

Pam Silberman, research fellow at the Shepp Center for Health Services Research in Chapel Hill, called the changes a major improvement for North Carolina consumers.

"It does provide some good starting points," said Silberman, who in April published a report card on the state's HMOs. "We're going to have much more information than we've ever had before."

Silberman said the package forces HMOs to collect data about how they operate and report it to the Insurance Department, allowing consumers for the first time to compare plans.

The bill also addresses concerns that financial incentives encourage HMO providers to withhold certain treatment. HMOs would have to determine if services are being underused if the bills pass. In addition, Silberman said the packages' grievance procedure will improve due process for patients denied coverage.

Missing from the bills are requirements contained in another measure, sponsored by Sen. Leslie Winner, a Charlotte Democrat. If passed by the General Assembly, that bill would require HMOs to tell prospective patients whether a plan covers a specific medication, among other things. It also would force HMOs to tell prospective patients how they treat specific health conditions. Both provisions would make it easier for consumers to shop for an HMO plan that best fits their needs, Silberman said.

Winner's bill has passed the Senate and is now in the House Rules Committee.

In her appearance before members of the Senate Commerce Committee, Perdue noted that HMOs are growing fast in the state. More than a million residents are now enrolled, she said, compared to 340,000 five years ago.

Perdue faced few tough questions from committee members, who seemed intent on sending the bills to a floor vote that could come next week. The measures must then win House approval and Gov. Jim Hunt's signature before they become law.

Sen. Tony Rand, a Fayetteville Democrat, and Sen. John Kerr, a Goldsboro Democrat, both asked why HMOs pay no state premium taxes, as commercial insurance companies are required to. Perdue said the issue is being discussed but is not addressed in her package.

She said the bills are designed to address, "the revolutionary or evolutionary changes that are taking place in health care today."

Jena Heath can be reached at 829-4739 or jheath@nando.com

NORTH CAROLINA DEPARTMENT OF INSURANCE
MEMORANDUM

June 10, 1997

TO: Members of the Senate Commerce Committee

FROM: William K. Hale
Deputy Commissioner

SUBJECT: Summaries of Managed Care Bills (SB 932 through SB 935)

Senate Bill 932 - Health Benefit Plan Operations

Establishes requirements for annual data reporting to the Commissioner by all health benefit plans. These requirements are: report on availability and accessibility of its provider network, measured in terms of numbers, types, and locations of providers and waiting times for appointments, and including performance targets and actual performance for these measures; summary of utilization review (UR) activity, UR appeals and grievances; additions and deletions in plan members, employer groups, and network providers; and summary information about the types of provider compensation used by the plan. Also requires that health benefit plans provide prospective insureds with a copy of their benefit plan policy upon request.

Adds a requirement that HMO license applicants submit information about their programs so the Commissioner can evaluate the applicants' abilities to assess the adequacies of their provider networks; programs to verify the credentials of network providers; quality management programs; and utilization review programs. Also requires evidence of having current capability to provide for covered services through a network of health care providers.

Requires that HMOs make HEDIS data available to employer groups with 1000 or more covered persons, providing group-specific data in accordance with HEDIS reporting guidelines. Plan-wide data must be available to all employer groups. Requires that HMOs file plan-wide HEDIS data with the Commissioner each year. HEDIS (Health Plan Employer Data and Information Set) is a nationally recognized, standardized data collection and reporting system that captures information about the cost and use of health care services, prevention, and health outcomes.

Places HMOs under the detailed financial and market conduct examination laws that currently apply to other insurers. HMOs are currently subject to examination by the Commissioner, but the HMO examination law is less sophisticated in spelling out the examination process.

Increases the Commissioner's authority and enforcement powers over HMOs by broadening the reasons for which an HMO license may be revoked or suspended. Changes are comparable to what currently applies to all other insurers.

Senate Bill 933 - Health Insurance Coverages and Networks

For all insured health benefit plans:

Establishes a standard definition of medical necessity for the purpose of determining whether or not there is coverage. Prohibits a plan from retracting a finding that services or supplies are medically necessary.

Requires that coverage be provided for emergency medical services, up to the point that a person is stabilized or it is determined that the condition is not an emergency, whenever a prudent lay person would have reasonably thought that an emergency condition existed. For example, if the symptoms appear to indicate an emergency situation, screening services must be covered, even if the results of the screening indicate that no emergency existed. Plans may not require prior authorization for emergency services or reduce level of coverage for emergency care rendered by a non-contracting provider.

For all insured health benefit plans that use provider networks:

Prohibits a plan from denying coverage or applying out-of-network coverage for services rendered by a provider who is not in the plan's network unless a network provider who was able to meet the particular health care needs of the insured was reasonably available without reasonable delay.

Prohibits a plan from discriminating against persons who may be considered high-risk (because of a health condition or geographic considerations) by systematically excluding from the plan's network those health care providers who treat those persons.

Requires that an insured who is a resident of a continuing care retirement community has the option of receiving care at health care facilities available in that retirement community, instead of being referred to a facility in the plan's network.

Senate Bill 934 - Preferred Provider Amendments

Repeals current preferred provider laws and replaces them with a new section that is substantively similar. The primary reason for this change is to reorganize existing language so that provisions that relate to the roles of the insurance company selling a PPO benefit plan, the preferred provider organization forming a provider network, and the preferred providers participating in the network are clearly delineated.

Adds a new requirement that network providers be informed of every health benefit plan that will use the particular network in which the providers participate and about the benefit design features that encourage insureds to use the network providers. Insurers must require that PPOs inform their providers of such information.

Makes it an unfair trade practice for an insurer to represent to a health care provider that the insurer is entitled to a price discount unless the provider has contracted with the insurer for that discount.

Makes a number of technical, conforming changes to other statutes that reference the current PPO laws.

Senate Bill 935 - Utilization Review and Grievances

Applies to all insured health benefit plans:

Repeals current law authorizing administrative rules that apply to utilization review and adds a new law that is more comprehensive than those rules. Adds better and more consumer-oriented requirements regarding information that must be provided to insureds about a plan's decision not to certify health care. Adds stricter requirements for the appeal process, including information that is conveyed to an insured about the plan's decision on an appeal. Requires that a person who is not satisfied with the result of the appeal have a second chance to appeal to the plan through a formal grievance process. Allows plans to offer an informal reconsideration of a noncertification before a member files an appeal.

Establishes requirements for a uniform two-step grievance process. Requires that insureds be allowed to file grievances on matters that are not related to utilization review. Includes a provision to allow a utilization review matter previously appealed to be heard as a second level grievance. Allows plans to offer informal consideration of a grievance before formal first level review.

As part of the second level review, insureds may: attend the review meeting; request information from the plan; present information; bring an

advocate, including legal representation; and ask questions of the review panel members.

Only physicians may be on a second level review panel when the grievance concerns a utilization review decision, unless a clinical peer was in on the primary level. In that case, an employee of the insurer may serve on the second level review panel.

Prohibits plans from discriminating against providers based on their actions when taken on behalf of an insured in making an appeal or grievance.

Grants immunity from liability for civil action to licensed physicians who review appeals or grievances, when actions were taken without malice or fraud.

Grants immunity from civil liability to licensed health care providers who participate in a medical review committee that evaluates the quality of, cost of, or necessity of health care services, including credentialing information, when their actions were taken without malice or fraud. Designates the proceedings and records of medical review committees as confidential.

Applies utilization review and grievance requirements to managed care workers compensation plans, to the extent that these requirements do not conflict with those of the Industrial Commission.

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Legislative Services Office

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June 10, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Committee Counsel

RE: Senate Bill 932 (PCS)
Senate Bill 933 (PCS)
Senate Bill 934 (PCS)
Senate Bill 935 (PCS)

SENATE BILL 932 (Health Benefit Plan Reporting Requirements)

Senate Bill 932 requires HMOs and insurers that operate managed care plans to provide additional reports on their operations to the Commissioner of Insurance. The HMOs and insurers must report to the Commissioner on how they are ensuring that their members have access to a sufficient number of plan providers, including primary care physicians and specialists, and how accessible these providers are to the members. They must also report on how they arrange for care for their members by providers who do not participate in their plans (for those situations in which the participating providers are unavailable). Additional reports are required on the utilization review activities of managed care plans, the number and type of grievances filed against the plans by members and the procedures for handling those grievances, the number of members that left the plan, changes in the plan's provider network (including how many providers have been terminated from the plan and how many have been added), and the methods used by the plan to compensate its providers. *Section 3* of the bill also requires HMOs to provide cost, outcome and other data for employer groups that they insure, with group specific-information required of larger employer groups (1,000 or more members) and plan-wide information for other employer groups.

Upon request, a managed care plan must also send to the member the policy, benefit booklet, or other summary of the plan. The accessibility, availability, and

other reports required under this bill must be made available for inspection on the insurer's premises by any insured.

The bill expands the type of information that must be filed by a prospective HMO seeking to be licensed in this State. The additional information focuses on the HMO's ability to have an adequate number of providers to serve it members, to validate its providers' credentials, to ensure quality care is provided, and to properly operate its utilization review program (*see Section 2*).

The bill also subjects HMOs to the same insurance examination laws that apply to other insurance companies and allows the Commissioner of Insurance to revoke or suspend the license of an HMO that knowingly or repeatedly files false data with the Department of Insurance (*see Section 4*).

Section 5 allows the Commissioner to suspend or revoke the license of an HMO for knowingly or repeatedly failing or refusing to comply with the law or a Department rule or an order of the Commissioner after notice and a hearing. This section also allows the Commissioner to suspend or revoke the license for knowingly falsifying a report required under this bill or the information on which the report is based.

The bill takes effect January 1, 1998.

SENATE BILL 933 (Managed Care Plan Network Standards)

Senate Bill 933 defines what "medically necessary" services means in managed care plans that limit benefits to those services, requires managed care plans to provide coverage for emergency care, and establishes standards for certain other aspects of managed care plans.

Each plan that limits benefits to "medically necessary" supplies and services must adhere to the uniform definition of "medically necessary" that is set out in the bill. "Medically necessary" means that the supplies or services are provided for the diagnosis or treatment or relief of a condition (and not for experimental, investigational, or cosmetic purposes), are necessary for and appropriate to the diagnosis or treatment, are within the accepted community standard of medical care, and are not solely for the convenience of the plan member, the plan member's family , or the provider (*see §58-3-200(b)).*

The bill also provides that if a managed care plan determines that a particular service or supply is covered under the plan, it cannot retract that determination once the service or supply has been provided, unless its determination was based on a material and knowing misrepresentation by the plan member or the provider. In addition, managed care plans cannot impose their higher non-network coinsurance rates on plan members who see an out-of-network provider if the out-of-network visit was due to the plan's inability to make a network provider reasonably available without unreasonable delay *(see subsections (c) and (d)).*

When a managed care plan is selecting providers to participate in its plan or deciding which ones to keep in the plan, it cannot base its decision on the fact that a provider is located in an area with a high-risk population or otherwise has a high-risk patient population. However, the provider can still be rejected or terminated for not meeting the plan's other selection criteria *(see subsection (e)).*

When a continuing care retirement community resident's physician determines that it is medically necessary for that resident, upon discharge from an acute care facility, to go to a skilled nursing facility, the insurer must allow the resident (if covered by Medicare or a similar health plan for federal retirees) to use a skilled nursing facility within the continuing care retirement community if the community is a Medicare-certified skilled nursing facility, agrees to the reimbursement rates paid to similar providers, agrees not to balance bill, and meets certain other requirements. The continuing care retirement community is not required to accept patients that are not residents of the community (*see subsection (f)).*

Section 2 of the bill requires insurers to provide coverage for emergency services to the extent necessary to stabilize the patient. Prior authorization of these services is not required if a prudent layperson would have believed it to be an emergency. Emergency services obtained outside the plan network must also be covered if a prudent layperson would have believed it to be an emergency and the patient did not seek the services from a plan provider because of circumstances beyond his or her control. The bill also

prohibits an insurer from retracting an authorization it gives for emergency services once the services have been performed (unless there was a material misrepresentation that led to the authorization)*(see G.S. §58-3-205(b), (c), and (d)).*

The emergency department and the insurer must make a good faith effort to timely communicate with each other after the patient is stabilized in order to prevent the patient's condition from worsening *(see §58-3-205(f)).* Insurers must notify their insureds about coverage of emergency medical care under the plan (see *§58-3-205(g)).*

This bill takes effect January 1, 1998.

SENATE BILL 934 (Preferred Provider Plans)

Senate Bill 934 rewrites the existing laws governing preferred provider organizations ("PPOs"). PPOs are health plans in which members can choose to see either the providers that are under contract with the plan or a provider of their choice. However, the plan typically does not provide full reimbursement when the member uses a provider that is not under contract with the plan. Current law allows the PPO to reduce the amount of reimbursement for a member who goes to a non-plan provider by as much as twenty percent (20%). Senate Bill 934 retains this 20% maximum differential *(see G.S. §58-50-56(i)).* PPO plans also use utilization review or qualify management programs to manage the health care that its members receive.

Current law allows all providers to submit proposals to a PPO for participation in the PPO. Current law also leaves to the PPO the discretion whether to accept or reject the provider. These features are retained in the Senate Bill 934. The bill also retains the current restriction that prevents a PPO from prohibiting its providers from participating in other PPO plans *(see §58-50-56(c) and (d)).*

Senate Bill 934 authorizes the Commissioner of Insurance to adopt rules on the accessibility, availability, and adequacy of providers in the PPO plan and rules to ensure the financial solvency of the plan (see *§58-50-56(g)).* Summary data on the financial terms of the contracts between PPOs and their providers must be provided to the Commissioner (see *§58-50-56(g)).*

Section 2 of the bill makes it an unfair insurance trade practice for an insurer to intentionally misrepresent to a provider that it is entitled to a discount on the provider's fee when the insurer is not so entitled (or is entitled to a lesser discount than it claims). This provision also applies to anyone who knowingly and substantially assists the insurer in making this misrepresentation.

Sections 3 through 11 make various conforming amendments to other statutes, and Sections 12 and 13 repeal the existing PPO statutes that are being replaced by G.S. §58-50-56, as created in Section 1 of the bill.

The bill takes effect January 1, 1998.

SENATE BILL 935 (Utilization Review and Grievance Procedures)

Senate Bill 935 establishes procedures and rights for members of managed care plans in the utilization review decisions by their plans and set outs procedures for member grievances against those plans. "Utilization review" refers to prior approval, second opinions, case management, and similar programs commonly used by managed care plans to determine whether particular treatment or medical care is necessary and appropriate for the patient.

All HMOs and insurers operating managed care plans must monitor all utilization review activities. HMOs and insurers often contract with other organizations known as utilization review organizations ("UROs") to perform utilization review on their behalf. Senate Bill 935 imposes several requirements to ensure that HMOs and insurers monitor their UROs and that the URO's duties and responsibilities are clearly spelled out. All utilization review programs must be administered by qualified health care personnel under the supervision of a medical doctor. Persons involved in utilization review cannot be financially rewarded or penalized based on the number or type of noncertifications they make *(see G.S. §58-50-61(d)).*

HMOs and insurers must also provide their members and providers with telephone access to the utilization review staff if prior certification of a procedure is required, and the HMO or insurer is entitled, in reviewing a request for prior certification, only to that information that is necessary to determine prior certification (see *G.S. §58-50-61(e)).* HMOs and insurers are required to make the determination on prior approval within 3 business days of the time they receive all necessary information. The same time limit applies to a concurrent review by the HMO or insurer. (A concurrent review is one conducted during the patient's hospital stay or course of treatment). In a concurrent review, an insurer remains liable for health care services provided to one of its enrollees until it notifies the enrollee of the noncertification. A longer time period (30 days to make a determination plus 5 days to notify) applies when the review is done after the treatment has already been rendered ("retrospective review")(*see G.S. §58-50-61(f) and (g)).*

When an HMO or insurer denies prior approval for a particular treatment, it must disclose its reasons for denial, including the clinical rationale and how the member can appeal the decision. The member may request a written statement of the clinical review criteria that the HMO or insurer used to make its determination (*see G.S. §58-50-61(h)).* The appeals process may include an opportunity for an informal appeal involving the member's physician or other provider and a medical doctor designated by the insurer (see (*see G.S. §58-50-61(i)).* Additional appeals by the member, both on an expedited basis and a nonexpedited basis, must be provided for. The expedited appeal is designed for members whose life, health, or ability to regain maximum function would be seriously jeopardized by pursuing a nonnexpedited appeal (*see G.S. §58-50-61(j), (k), and (l)).*

The utilization review process, the appeals process, and the insured's appeal rights must be disclosed to the insured in the certificate of coverage and the plan handbook.

Prospective insureds must be provided a summary of its utilization review procedures (*see G.S. §58-50-61(m)).*

Section 2 of the bill requires HMOs and insurers with managed care plans to establish grievance procedures so that plan members can have their grievances reviewed by the plan. The HMO or insurer may have an informal grievance level; if not or if the informal review does not resolve the grievance, there are two additional levels of review to which an insured is entitled. At the first level, the insured is entitled to review of the grievance by someone other than the person who was involved in the matter that gave rise to the grievance. The member has the right to submit written material at the review, but it is up the HMO or insurer whether the member can appear in person. A decision of the grievance must be made at this first level of review within 30 days of the it was filed. The HMO or insurer must explain the reason for its decision and refer to any evidence or documentation that it used as the basis for the decision. A second level of review must be made available for plan members who are dissatisfied with the results at the first level. At the second level of review, the member has the right to a hearing before a review panel. The panel must consist of persons who were not involved in the matter that gave rise to the grievance, who are not employees of the HMO or insurer (or a utilization review organization with whom they contract), and who do not have a financial interest in the outcome of the grievance. (An employee involved at the first level may, however, participate on a second-level panel if that panel has 3 or more members and a clinical peer was used at the first level). The panel must meet within 45 days of the second-level appeal and must issue a decision within seven business days after that meeting.

Section 3 of the bill provides that a member of a medical review committee, formed for the purposes of evaluating the quality of, cost of, or necessity for health care services in a managed care plan, is immune from liability for statements without malice or fraud made during the medical review proceedings. The records of the medical review committee are confidential.

Sections 4 and 5 of the bill make conforming changes.

This bill takes effect January 1, 1998.

S932-SMRN-001

VISITOR REGISTRATION SHEET

Commerce Committee — June 18, 1991

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Davis Bradshaw	SHPPA
Weldon Roper	EDA, PA
Kim Smith	NCLM
Susan Hancock	U.N.C. Ag Ext
Tom Schoenagel	NCANPHA
Robert Powell	Indep Prin Walk
Floyd H. Steen	Sr. Tar Heel Legislature
Robert Dodd	Sr. Tarheel Legislature
Brenda Summers	NC Equity
Polly Williams	NC Coalition on Aging/OWL
Tommy Hunter	CHS
IVOR COLLINS	CCCR of NC & Carol Woods
CHRIS HAMLET	CCCRNC - Forest at Duke
Karen Carpenter	PCS
Lyman Cooper	CSX
Mac Momboisse	Poyner & Spruill
Katherine Davis	Electricities
Alice McFarland	"
Stan Williams	State Hwy Comm.
Will Lumpkin	NCAHC
Jesse Dedmon	WCSR

VISITOR REGISTRATION SHEET

Commerce Committee — June 10, 1997
Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Amy Kinder	Hunton & Williams
Jon Levine	DEHNR
Katherine Hill	NC Psychiatric
Evelyn Hairston	NCHA
Hugh Tilson	NCHA
Adam Searing	NCHAC
Myra Thal	NASW-NC
W. Dunk	
Robert Glaser	NC Auto Dlrs.
Sam Johnson	Atty
H Webb	Johnson et al
Doris Dick	Speaker, Senior Tar Heel Legislator
Dorothy Rose Crawford	Senior Tar Heel Legislature - Macon
William Savage	" " "
Robert Edwards	N.C Tar Heel Leg.
Jake Dixon	NCSTHL
Wilson Griffin	NCSTHL Cleveland
Wayne Condrey	NC State Heels - Forsyth
Dario Ramaiuolo	NCADD
Liz Kanoy	NC medical Society
Steve Keane	

VISITOR REGISTRATION SHEET

Commerce Committee — Jan 10, 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Daniella P	Florida State University Student
Henry A Landsberger	AARP - State Legis. Committee
Richard C. Hatch	AARP - NC State Legislative Committee
Murphy Smith	Glenaire CCRC
Helen Lowerton	" "
J. N. Foster	" "
Mary Morris	Methodist Retirement CCCR.
Woody Lyons	Glenaire CCRC
Edward P. Whitten	Carolina Meadows CCRC Chapel Hill

MINUTES
SENATE COMMERCE COMMITTEE
June 24, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building on Tuesday, June 24, 1997, at 8:00 a.m. Eighteen members of the Committee were present. Visitor Registration Sheets are attached listing others attending the meeting.

Senator R. C. Soles, Jr., called the meeting to order.

The following bills were considered by the Committee:

C.S. for HB 899, AN ACT TO MODIFY THE REQUIREMENTS FOR DISCLOSURES UPON THE SALE OF RESIDENTIAL PROPERTIES.

Representative Howard, the bill sponsor, was recognized for an explanation of the bill. Senator Hoyle moved that the Proposed Senate Committee Substitute for C. S. for HB 899 be adopted. Motion carried. Representative Howard said the Proposed Senate Committee Substitute incorporates the changes that the full Committee had suggested when the bill was taken up in an earlier meeting. Some technical changes have been made and the effective date provisions revised.

She said the bill simply amends the Residential Property Disclosure Act by deleting the statutory disclosure form and directing the Real Estate Commission to adopt a standard disclosure form. The bill also clarifies when the buyer's right to cancel a contract terminates when the disclosure is not furnished to the buyer at or prior to the time of the contract. (See memorandum from Committee Co-Counsel dated June 24, 1997, for additional explanation.)

Senator Warren who was Chairman of the Subcommittee on C. S. for HB 899 reported that the Subcommittee had met and was recommending approval of the Proposed Senate Committee Substitute. The subcommittee felt it was a workable solution to the questions raised on the original bill.

Senator Kerr sent forward an amendment and moved its adoption. (Copy attached.) Motion carried.

Senator Kerr then moved that the Proposed Senate Committee Substitute for C. S. for HB 899 be given a favorable report, as amended, and that the amendment be incorporated into the Committee Substitute. Motion carried.

C. S. for HB 739, AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACGURERS LICENSING LAW.

Senator Hoyle offered a Proposed Senate Committee Substitute for C. S. for HB 739 and moved its adoption. Motion carried. He then proceeded with a comprehensive explanation of the bill. (See attached memorandum from Committee Co-Counsel for additional information.) He said the automobile dealers have signed off on the bill and meetings had been held with manufacturer's representatives on the legislation. Mr. Sam Johnson, representing the automobile dealers, and Mr. Marvin Musselwhite, representing the manufacturers, spoke on the bill. Mr. Richard Vinegar and former Senator Sandy Sands assisted in answering questions.

Senator Rand offered an amendment to the bill relating to satellite dealers (See copy attached.) and moved its adoption. Motion carried.

Senator Hoyle moved that the Proposed Senate Committee Substitute for C. S. for HB 739 be given a favorable report, as amended, and that the amendment be incorporated into the Committee Substitute. Motion carried.

C.S. FOR HB 1059, AN ACT TO AMEND THE COASTAL AREA MANAGEMENT ACT TO ALLOW CERTAIN TYPES OF REDEVELOPMENT WITHIN URBAN WATERFRONTS THAT HISTORICALLY HAVE A PATTERN OF URBAN-LEVEL DEVELOPMENT.

Representative Wright, the bill sponsor, explained the bill. He said it amends the Coastal Area Management Act to allow for redevelopment in historically urban waterfront areas under certain conditions. (See attached memorandum from Committee Co-Counsel which sets forth these conditions.)

Senator Ballentine sent forward an amendment and moved its adoption. (See attached copy.) Motion carried.

Senator Kincaid moved that C. S. for HB 1059 be given a favorable report, as amended, and that it be rolled into a Senate Committee Substitute. Motion carried.

The meeting adjourned at 9:00 a.m.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, June 25, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**739** MV Dealers/Manufacturers Lic. Law.

Draft Number:	PCS7334
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

AMENDED REPORT

Wednesday, August 13, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**899** Residential Prop. Disclosure Act

Draft Number:	PCS7335
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment:

Subcom.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 899
Committee Substitute Favorable 4/24/97

Short Title: Residential Prop. Disclosure Act. (Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENTS FOR DISCLOSURES UPON THE SALE OF RESIDENTIAL PROPERTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47E-4 reads as rewritten:

"**§ 47E-4. Required disclosures.**

(a) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser a residential property disclosure statement. The disclosure statement ~~shall contain the language and be in the form set forth in subsection (b) of this section. The statement~~ shall:

(1) Disclose those items which are required to be disclosed relative to the condition of the property and of which the owner has actual knowledge; or

(2) State that the owner makes no representations as to the condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.

~~(b) A residential property disclosure statement shall read as follows:~~

~~"RESIDENTIAL PROPERTY DISCLOSURE STATEMENT~~

~~Notice to Seller and Purchaser~~

~~The North Carolina Residential Property Disclosure Act requires the owner of residential real property consisting of 1-4 units, whenever the property is to be sold,~~

~~exchanged, optioned, or purchased pursuant to a lease with option to purchase, to furnish to the purchaser a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of the property. Certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling.~~

~~Property Address/Description:_____~~

~~The undersigned owner(s) of the real property described above disclose the following present conditions of the real property of which the owner(s) has actual knowledge with regard to:~~

~~1. Any abnormality or malfunctioning of the water supply or sanitary sewage disposal system:~~

~~[] Yes [] None Known [] No Representations~~

~~If Yes, please describe_____~~

~~2. Any damage to or abnormality of the roof, chimneys, floors, foundation, basement, or load-bearing walls, or any leak in the roof or basement:~~

~~[] Yes [] None Known [] No Representations~~

~~If Yes, please describe_____~~

~~3. Any abnormality or malfunctioning of the plumbing, electrical, heating, or cooling systems:~~

~~[] Yes [] None Known [] No Representations~~

~~If Yes, please describe_____~~

~~4. Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired:~~

~~[] Yes [] None Known [] No Representations~~

~~If Yes, please describe_____~~

~~5. The real property's violation of zoning laws, restrictive covenants or building codes; any encroachment of the real property from or to adjacent real property; or notice from any governmental agency affecting this real property:~~

~~[] Yes [] None Known [] No Representations~~

~~If Yes, please describe_____~~

~~6. Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered):~~

~~[] Yes [] None Known [] No Representations~~

~~If Yes, please describe_____~~

~~The purchaser and owner may wish to obtain professional advice about, or inspections of, the real property. The owner has a duty to disclose any material inaccuracy in this statement or any material change in the real property which is discovered between the date of this statement and the closing of the transaction. The owner(s) acknowledge having examined this statement before signing below:~~

~~_____ _____ _____ _____~~

~~Owner Date Owner Date~~

~~The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further acknowledge that they have examined it before signing below:~~

~~Purchaser Date Purchaser Date~~"

(b) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this section. The disclosure statement shall include the following characteristics and conditions of the property:

(1) The water supply and sanitary sewage disposal system;

(2) The roof, chimneys, floors, foundation, basement, and other structural components and any modifications of these structural components;

(3) The plumbing, electrical, heating, cooling, and other mechanical systems;

(4) Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired;

(5) The zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from any governmental agency affecting this real property; and

(6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered), and other environmental contamination.

(c) The rights of the parties to a real estate contract as to conditions of the property of which the owner had no actual knowledge are not affected by this Article unless the residential disclosure statement states that the owner makes no representations as to those conditions. If the statement states that an owner makes no representations as to the conditions of the property, then the owner has no duty to disclose those conditions, whether or not the owner should have known of them."

Section 2. G.S. 47E-5 reads as rewritten:

"**§ 47E-5. Time for disclosure; cancellation of contract.**

(a) The owner of real property subject to this Chapter shall deliver to the purchaser the ~~written disclosures~~ disclosure statement required by this Chapter no later than the time ~~such~~ the purchaser makes an offer to purchase, exchange, or option the property, or exercises the option to purchase the property pursuant to a lease with an option to purchase. The residential property disclosure statement may be included in the real estate contract, in an addendum, or in a separate document.

(b) If the disclosure statement required by this Chapter is not delivered to ~~such~~ the purchaser ~~after~~ prior to or at the time the purchaser makes an offer, the purchaser may ~~terminate~~ cancel any resulting real estate ~~contract or withdraw the offer no later than three days after the purchaser receives the disclosure statement.~~

contract. The purchaser's right to cancel shall expire if not exercised prior to any of the following events:

(1) The end of the third calendar day following his receipt of the disclosure statement;

(2) The end of the third calendar day following the date the contract was made;

(3) Settlement or occupancy by the purchaser in the case of a sale or exchange; or

(4) Settlement in the case of a purchase pursuant to a lease with option to purchase.

Any right of the purchaser to cancel the contract provided by this subsection is waived conclusively if not exercised in the manner required by this subsection.

In order to ~~terminate~~ cancel a real estate contract when permitted by this section, the purchaser shall, within the time required above, give written notice to the owner or the owner's agent either by hand delivery or by depositing into the United States mail, postage prepaid, and properly addressed to the owner or the owner's agent. If the purchaser ~~terminates~~ cancels a real estate contract ~~or withdraws an offer~~ in compliance with this subsection, the ~~termination or withdrawal of offer~~ cancellation shall be without penalty to the purchaser, and he shall be entitled to a refund of any deposit ~~shall be promptly returned to the purchaser. Any rights of the purchaser to terminate the contract provided by this subsection are waived conclusively if not exercised prior to the earlier of settlement or occupancy by the purchaser in the case of a sale or exchange, or prior to settlement in the case of a purchase pursuant to a lease with option to purchase.~~ he may have paid. Any rights of the purchaser to cancel or terminate the contract for reasons other than those set forth in this subsection are not affected by this subsection."

Section 3. G.S. 47E-6 reads as rewritten:

"**§ 47E-6. Owner liability for disclosure of information provided by others.**

~~If the owner chooses to provide a disclosure of property condition pursuant to G.S. 47E-4, the~~ The owner may discharge the duty to disclose imposed by this Chapter by providing a written report attached to the residential property disclosure statement by a public agency or by an engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of the public agency's functions or the expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this section if the error, inaccuracy, or omission was made in reasonable reliance upon the information provided by the public agency or expert and the owner was not grossly negligent in obtaining the information or transmitting it."

Section 4. G.S. 47E-8 reads as rewritten:

"**§ 47E-8. Agent's duty.**

A real estate broker or salesman acting as ~~the~~ an agent ~~of the owner of~~ in a residential real ~~property~~ estate transaction has the duty to inform ~~the owner~~ each of his clients of the ~~owner's~~ client's rights and obligations under this Chapter. Provided the owner's real estate broker or salesman has performed this duty, the broker or

salesman shall not be responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure statement. Nothing in this Chapter shall be construed to conflict with, or alter, the broker or salesman's duties under Chapter 93A of the General Statutes."

Section 5. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H899-CSRU-002
PROPOSED SENATE COMMITTEE SUBSTITUTE
HOUSE BILL 899
Committee Substitute Favorable 4/24/97
THIS IS A DRAFT 23-JUN-97 18:10:14
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Residential Prop. Disclosure Act. (Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENTS FOR DISCLOSURES UPON THE SALE OF RESIDENTIAL PROPERTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47E-4 reads as rewritten:

"**§ 47E-4. Required disclosures.**

(a) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser a residential property disclosure statement. The disclosure statement ~~shall contain the language and be in the form set forth in subsection (b) of this section. The statement~~ shall:

(1) Disclose those items which are required to be disclosed relative to the characteristics and condition of the property and of which the owner has actual knowledge; or

(2) State that the owner makes no representations as to the characteristics and condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.

~~(b) A residential property disclosure statement shall read as follows:~~

~~"RESIDENTIAL PROPERTY DISCLOSURE STATEMENT~~

~~Notice to Seller and Purchaser~~

~~The North Carolina Residential Property Disclosure Act requires the owner of residential real property consisting of 1-4 units, whenever the property is to be sold, exchanged, optioned, or purchased pursuant to a lease with option to purchase, to furnish to the purchaser a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of the property. Certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling.~~

~~Property Address/Description:_____~~

~~The undersigned owner(s) of the real property described above disclose the following present conditions of the real property of which the owner(s) has actual knowledge with regard to:~~

~~1. Any abnormality or malfunctioning of the water supply or sanitary sewage disposal system:~~

~~[ ]Yes [ ]None Known [ ]No Representations~~

~~If Yes, please describe_____~~

~~2. Any damage to or abnormality of the roof, chimneys, floors, foundation, basement, or load-bearing walls, or any leak in the roof or basement:~~

~~[ ]Yes [ ]None Known [ ]No Representations~~

~~If Yes, please describe_____~~

~~3. Any abnormality or malfunctioning of the plumbing, electrical, heating, or cooling systems:~~

~~[ ]Yes [ ]None Known [ ]No Representations~~

~~If Yes, please describe_____~~

~~4. Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired:~~

~~[ ]Yes [ ]None Known [ ]No Representations~~

~~If Yes, please describe_____~~

~~5. The real property's violation of zoning laws, restrictive covenants or building codes; any encroachment of the real property from or to adjacent real property; or notice from any governmental agency affecting this real property:~~

~~[ ]Yes [ ]None Known [ ]No Representations~~

~~If Yes, please describe_____~~

~~6. Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered):~~

~~[ ]Yes [ ]None Known [ ]No Representations~~

~~If Yes, please describe_____~~

~~The purchaser and owner may wish to obtain professional advice about, or inspections of, the real property. The owner has a duty to disclose any material inaccuracy in this statement or any material change in the real property which is discovered between the date of this statement and the closing of the transaction. The owner(s) acknowledge having examined this statement before signing below:~~

~~_____ _____ _____ _____~~

~~Owner Date Owner Date~~

~~The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further acknowledge that they have examined it before signing below:~~

~~_____ _____ _____ _____~~

~~Purchaser Date Purchaser Date~~"

(b) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this section. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling, and shall include at least the following characteristics and conditions of the property:

(1) The water supply and sanitary sewage disposal system;

(2) The roof, chimneys, floors, foundation, basement, and other structural components and any modifications of these structural components;

(3) The plumbing, electrical, heating, cooling, and other mechanical systems;

(4) Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired;

(5) The zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and

notice from any governmental agency affecting this real property; and

(6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered), and other environmental contamination.

(c) The rights of the parties to a real estate contract as to conditions of the property of which the owner had no actual knowledge are not affected by this Article unless the residential disclosure statement states that the owner makes no representations as to those conditions. If the statement states that an owner makes no representations as to the conditions of the property, then the owner has no duty to disclose those conditions, whether or not the owner should have known of them."

Section 2. G.S. 47E-5 reads as rewritten:

"**§ 47E-5. Time for disclosure; cancellation of contract.**

(a) The owner of real property subject to this Chapter shall deliver to the purchaser the ~~written disclosures~~ disclosure statement required by this Chapter no later than the time ~~such~~ the purchaser makes an offer to purchase, exchange, or option the property, or exercises the option to purchase the property pursuant to a lease with an option to purchase. The residential property disclosure statement may be included in the real estate contract, in an addendum, or in a separate document.

(b) If the disclosure statement required by this Chapter is not delivered to ~~such~~ the purchaser ~~after~~ prior to or at the time the purchaser makes an offer, the purchaser may ~~terminate~~ cancel any resulting real estate ~~contract or withdraw the offer no later than three days after the purchaser receives the disclosure statement.~~ contract. The purchaser's right to cancel shall expire if not exercised prior to the following, whichever occurs first:

(1) The end of the third calendar day following the purchaser's receipt of the disclosure statement;

(2) The end of the third calendar day following the date the contract was made;

(3) Settlement or occupancy by the purchaser in the case of a sale or exchange; or

(4) Settlement in the case of a purchase pursuant to a lease with option to purchase.

Any right of the purchaser to cancel the contract provided by this subsection is waived conclusively if not exercised in the manner required by this subsection.

In order to ~~terminate~~ cancel a real estate contract when permitted by this section, the purchaser shall, within the time required above, give written notice to the owner or the owner's agent either by hand delivery or by depositing into the United States mail, postage prepaid, and properly addressed to the owner or the owner's agent. If the purchaser ~~terminates~~ cancels a real estate contract ~~or withdraws an offer~~ in compliance with this subsection, the ~~termination or withdrawal of offer~~ cancellation shall be without penalty to the purchaser, and the purchaser shall be entitled to a refund of any deposit ~~shall be promptly returned to the purchaser. Any rights of the purchaser to terminate the contract provided by this subsection are waived conclusively if not exercised prior to the earlier of settlement or occupancy by the purchaser in the case of a sale or exchange, or prior to settlement in the case of a purchase pursuant to a lease with option to purchase.~~ the purchaser may have paid. Any rights of the purchaser to cancel or terminate the contract for reasons other than those set forth in this subsection are not affected by this subsection."

Section 3. G.S. 47E-6 reads as rewritten:

"**§ 47E-6. Owner liability for disclosure of information provided by others.**

~~If the owner chooses to provide a disclosure of property condition pursuant to G.S. 47E-4, the~~ The owner may discharge the duty to disclose imposed by this Chapter by providing a written report attached to the residential property disclosure statement by a public agency or by an engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of the public agency's functions or the expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this section if the error, inaccuracy, or omission was made in reasonable reliance upon the information provided by the public agency or expert and the owner was not grossly negligent in obtaining the information or transmitting it."

Section 4. G.S. 47E-8 reads as rewritten:

"**§ 47E-8. Agent's duty.**

A real estate broker or salesman acting as ~~the~~ an agent ~~of the owner of~~ in a residential real ~~property~~ estate transaction has the duty to inform ~~the owner~~ each of the clients of the real estate broker or salesman of the ~~owner's~~ client's rights and obligations under this Chapter. Provided the owner's real estate broker or salesman has performed this duty, the broker or

salesman shall not be responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure statement. Nothing in this Chapter shall be construed to conflict with, or alter, the broker or salesman's duties under Chapter 93A of the General Statutes."

Section 5. G.S. 47E-1 reads as rewritten:

"**§ 47E-1. Applicability.**

This Chapter applies to the following transfers of residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesman:

(1) Sale or exchange,

(2) Installment land sales contract,

(3) Option, or

(4) Lease with option to purchase, except as provided in ~~G.S. 47E-1-2(10).~~ G.S. 47E-2(10)."

Section 6. Section 1 of this act becomes effective October 1, 1998 and applies to contracts entered into on or after that date. Sections 2, 3, and 4 of this act become effective December 1, 1997 and apply to contracts entered into on or after that date. Section 5 of this act is effective when this act becomes law. Effective when this act becomes law, the North Carolina Real Estate Commission is authorized to develop the standard disclosure statement under the amendments made by this act to G.S. 47E-4(b) to become effective October 1, 1998.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 879 PCS 002 DATE _____

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

Rep.)
) KERR
Sen.)

moves to amend the bill on page 4, lines 6 + 7

by INSERTING BETWEEN THE LINES THE FOLLOWING SENTENCE TO READ:

"THE FORM SHALL PROVIDE THE OWNER WITH THE OPTION TO INDICATE WHETHER THE OWNER HAS ACTUAL KNOWLEDGE OF THE SPECIFIED CONDITIONS OF THE OWNER IS MAKING NO REPRESENTATIONS TO ANY CURRENT OWNER OF CONDITION."

SIGNED _____

ADOPTED 6/2/77 FAILED _____ TABLED _____

GA-33-A

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 899
Committee Substitute Favorable 4/24/97
Proposed Senate Committee Substitute H899-PCS7335

Short Title: Residential Prop. Disclosure Act. (Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENTS FOR DISCLOSURES UPON THE SALE OF RESIDENTIAL PROPERTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47E-4 reads as rewritten:

"**§ 47E-4. Required disclosures.**

(a) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser a residential property disclosure statement. The disclosure statement ~~shall contain the language and be in the form set forth in subsection (b) of this section. The statement~~ shall:

(1) Disclose those items which are required to be disclosed relative to the characteristics and condition of the property and of which the owner has actual knowledge; or

(2) State that the owner makes no representations as to the characteristics and condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.

~~(b) A residential property disclosure statement shall read as follows:~~

~~"RESIDENTIAL PROPERTY DISCLOSURE STATEMENT~~

~~Notice to Seller and Purchaser~~

~~The North Carolina Residential Property Disclosure Act requires the owner of residential real property consisting of 1-4 units, whenever the property is to be sold, exchanged, optioned, or purchased pursuant to a lease with option to purchase, to furnish to the purchaser a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of the property. Certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling.~~

~~Property Address/Description:_____~~

~~The undersigned owner(s) of the real property described above disclose the following present conditions of the real property of which the owner(s) has actual knowledge with regard to:~~

~~1. Any abnormality or malfunctioning of the water supply or sanitary sewage disposal system:~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~2. Any damage to or abnormality of the roof, chimneys, floors, foundation, basement, or load-bearing walls, or any leak in the roof or basement:~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~3. Any abnormality or malfunctioning of the plumbing, electrical, heating, or cooling systems:~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~4. Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired:~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~5. The real property's violation of zoning laws, restrictive covenants or building codes; any encroachment of the real property from or to adjacent real property; or notice from any governmental agency affecting this real property:~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~6. Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered):~~

~~[]Yes []None Known []No Representations~~

~~If Yes, please describe_____~~

~~The purchaser and owner may wish to obtain professional advice about, or inspections of, the real property. The owner has a duty to disclose any material inaccuracy in this statement or any material change in the real property which is discovered between the date of this statement and the closing of the transaction. The owner(s) acknowledge having examined this statement before signing below:~~

_____ _____ _____ _____

~~Owner Date Owner Date~~
~~The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further acknowledge that they have examined it before signing below:~~

_____ _____ _____ _____
~~Purchaser Date Purchaser Date~~"

(b) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this section. The disclosure statement shall specify that certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling, and shall include at least the following characteristics and conditions of the property:

(1) The water supply and sanitary sewage disposal system;
(2) The roof, chimneys, floors, foundation, basement, and other structural components and any modifications of these structural components;
(3) The plumbing, electrical, heating, cooling, and other mechanical systems;
(4) Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired;
(5) The zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from any governmental agency affecting this real property; and
(6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered), and other environmental contamination.

The disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics or conditions, or the owner is making no representations as to any characteristic or condition.

(c) The rights of the parties to a real estate contract as to conditions of the property of which the owner had no actual knowledge are not affected by this Article unless the residential disclosure statement states that the owner makes no representations as to those conditions. If the statement states that an owner makes no representations as to the conditions of the property, then the owner has no duty to disclose those conditions, whether or not the owner should have known of them."

Section 2. G.S. 47E-5 reads as rewritten:

"**§ 47E-5. Time for disclosure; cancellation of contract.**

(a) The owner of real property subject to this Chapter shall deliver to the purchaser the ~~written disclosures~~ disclosure statement required by this Chapter no later than the time ~~such~~ the purchaser makes an offer to purchase, exchange, or option the property, or exercises the option to purchase the property pursuant to a

lease with an option to purchase. The residential property disclosure statement may be included in the real estate contract, in an addendum, or in a separate document.

(b) If the disclosure statement required by this Chapter is not delivered to ~~such~~ the purchaser ~~after~~ prior to or at the time the purchaser makes an offer, the purchaser may ~~terminate~~ cancel any resulting real estate ~~contract or withdraw the offer no later than three days after the purchaser receives the disclosure statement.~~ contract. The purchaser's right to cancel shall expire if not exercised prior to the following, whichever occurs first:

(1) The end of the third calendar day following the purchaser's receipt of the disclosure statement;

(2) The end of the third calendar day following the date the contract was made;

(3) Settlement or occupancy by the purchaser in the case of a sale or exchange; or

(4) Settlement in the case of a purchase pursuant to a lease with option to purchase.

Any right of the purchaser to cancel the contract provided by this subsection is waived conclusively if not exercised in the manner required by this subsection.

In order to ~~terminate~~ cancel a real estate contract when permitted by this section, the purchaser shall, within the time required above, give written notice to the owner or the owner's agent either by hand delivery or by depositing into the United States mail, postage prepaid, and properly addressed to the owner or the owner's agent. If the purchaser ~~terminates~~ cancels a real estate contract ~~or withdraws an offer~~ in compliance with this subsection, the ~~termination or withdrawal of offer~~ cancellation shall be without penalty to the purchaser, and the purchaser shall be entitled to a refund of any deposit ~~shall be promptly returned to the purchaser. Any rights of the purchaser to terminate the contract provided by this subsection are waived conclusively if not exercised prior to the earlier of settlement or occupancy by the purchaser in the case of a sale or exchange, or prior to settlement in the case of a purchase pursuant to a lease with option to purchase.~~ the purchaser may have paid. Any rights of the purchaser to cancel or terminate the contract for reasons other than those set forth in this subsection are not affected by this subsection."

Section 3. G.S. 47E-6 reads as rewritten:

"**§ 47E-6. Owner liability for disclosure of information provided by others.**

~~If the owner chooses to provide a disclosure of property condition pursuant to G.S. 47E-4, the~~ The owner may discharge the duty to disclose imposed by this Chapter by providing a written report attached to the residential property disclosure statement by a public agency or by an engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of the public agency's functions or the expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this section if the error, inaccuracy, or omission was made in reasonable reliance upon the information provided by the public agency or expert and the owner was not grossly negligent in obtaining the information or transmitting it."

Section 4. G.S. 47E-8 reads as rewritten:

"**§ 47E-8. Agent's duty.**

A real estate broker or salesman acting as ~~the~~ an agent ~~of the owner of~~ in a residential real ~~property~~ estate transaction has the duty to inform ~~the owner~~ each of the clients of the real estate broker or salesman of the ~~owner's~~ client's rights and obligations under this Chapter. Provided the owner's real estate broker or salesman has performed this duty, the broker or salesman shall not be responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure statement. Nothing in this Chapter shall be construed to conflict with, or alter, the broker or salesman's duties under Chapter 93A of the General Statutes."

Section 5. G.S. 47E-1 reads as rewritten:

"**§ 47E-1. Applicability.**

This Chapter applies to the following transfers of residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesman:

(1) Sale or exchange,

(2) Installment land sales contract,

(3) Option, or

(4) Lease with option to purchase, except as provided in ~~G.S. 47E-1-2(10).~~ G.S. 47E-2(10)."

Section 6. Section 1 of this act becomes effective October 1, 1998, and applies to contracts entered into on or after that date. Sections 2, 3, and 4 of this act become effective December 1, 1997, and apply to contracts entered into on or after that date. Section 5 of this act is effective when this act becomes law. Effective when this act becomes law, the North Carolina Real Estate Commission is authorized to develop the standard disclosure statement under the amendments made by this act to G.S. 47E-4(b) to become effective October 1, 1998.

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June 24, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 899 - RESIDENTIAL PROPERTY DISCLOSURE ACT** - Representative Howard.

The Proposed Senate Committee Substitute for House Bill 899 amends the Residential Property Disclosure Act by deleting the statutory disclosure form and directing the Real Estate Commission to adopt a standard disclosure form. The bill also clarifies when the buyer's right to cancel a contract terminates when the disclosure is not furnished to the buyer at or prior to the time of the contract.

Section 1 of the bill amends G.S. 47E-4 by deleting the disclosure form in the statute and requiring the Real Estate Commission to develop a standard disclosure statement. This section also amends the matters that are to be included in a standard disclosure statement by adding disclosure of characteristics and conditions of: structural components and modifications to structural components, other mechanical systems, other land-use restrictions, and environmental contamination.

Section 2 amends the time for the buyer to cancel the contract in situations where the disclosure was not furnished to the buyer prior to or at the time of contract. Current law gives the buyer three days from the date the disclosure is given to cancel the contract, but the law does not set any maximum time within which the buyer must cancel. Under current law if no disclosure is given prior to closing, the buyer may cancel anytime up until the title is transferred. This bill provides that the right to cancel terminates either at the end of the third day following receipt of the disclosure (same as current law), the end of the third day following the date the contract is made, upon settlement or occupancy in the case of sale or exchange, or settlement in the case of a purchase pursuant to a lease with option to purchase. The right to cancel is waived if not exercised within the applicable time limits, in writing, and either hand delivered or mailed to the seller or the seller's agent.

Section 3 makes a stylistic change.

Section 4 amends the duty of the agent to inform the owner of the property of the duty to disclose by requiring the agent to inform the agent's clients of their rights under this law, regardless whether they are the seller or the buyer.

Section 5 makes a technical change correcting an incorrect statutory reference.

The required changes to the disclosure form to be made by the Real Estate Licensing Commission as set forth in Section 1 of the bill would become effective October 1, 1998 and would apply to contracts entered into on or after that date. The change in the law to limit the time the buyer has to cancel, which are in Section 2 of the bill, and the amendments in Section 3 and 4 of the bill become effective December 1, 1997 and apply to contracts entered into on or after that date. Section 5 would become effective when the bill becomes law. The Real Estate Commission is given authority when the bill becomes law to begin development and adoption of the disclosure form that becomes effective October 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 739*
Committee Substitute Favorable 4/28/97

Short Title: MV Dealers/Manufacturers Lic. Law. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-297.1. Prefiling of franchise agreements and amendments.**

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State shall file with the Commissioner a copy of the franchise and all supplements. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements thereto. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:

(1) A copy of the form franchise which incorporates all of the proposed revisions, modifications, and additions;

(2) A separate statement which identifies and provides a detailed description of all substantive revisions, modifications, and additions proposed.

It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article."

Section 2. G.S. 20-301 reads as rewritten:

"**§ 20-301. Powers of Commissioner.**

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or ~~practices.~~ practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where ~~they shall be~~ hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other ~~remedy~~ remedy, bring an action in the name of the State against ~~such~~ that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin ~~such~~ any persons ~~and such other persons~~ from continuing the ~~same.~~ violations.

(e) ~~The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days. The Commissioner may extend the time for discovery beyond 60 days either upon the consent of all parties to the proceeding or upon application of one or more~~

~~parties to the proceeding for good cause shown.~~ The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section."

Section 3. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment,

relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

a. A manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership in the event of a proposed change of all, or substantially all, ownership or transfer of all, or substantially all, dealership assets, if all of the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within 30 days after receipt of notice from a dealer of a proposed transfer, sale, or assignment as set forth in sub-subdivision a. above.
2. The exercise of the right of first refusal will result in the dealer and dealer's owners receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of all, or substantially all, ownership or transfer of all, or substantially all, dealership assets.
3. The proposed change of all, or substantially all, ownership or transfer of all, or substantially all, dealership assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to a designated successor, the spouse, child or grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer owner, of one or more dealer owners or to a qualified manager or to a partnership or corporation controlled by such persons.
4. The manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorneys' fees which do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the existing dealer and the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of all, or

substantially all, ownership or transfer of all, or substantially all, dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorneys' fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such an accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;

4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:

1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
3. Effect on the consuming public in the relevant market area;
4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner ~~must~~ shall try to conduct the hearing and render his final determination ~~as expeditiously as possible, but in any event no later than~~ if possible, within 180 days after a protest is filed. ~~Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer,~~

~~unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.~~

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

g. For purposes of this subdivision, the addition, creation, or operation of a 'satellite' or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has

determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner ~~must~~ shall try to conduct the hearing and render a final determination ~~no later than~~ within 180 days after a petition has been ~~filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to the proceeding.~~ filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. --

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or

circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. --

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a

price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or

2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum

equivalent to the reasonable rental value of the dealership facilities for one year.

3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated family member successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated ~~family member~~ successor. Failure by the franchisor to send notice of objection

within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.

6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated

successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall

not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.

(29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise.

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on any of the following factors:

a. The dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise;

b. The dealer's relocation, remodeling, repair, or renovation of existing dealership facilities;

c. The dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer; or

d. Achievement by the new motor vehicle dealer of one or more levels of customer satisfaction in sales or service specified by the manufacturer.

Such unlawful price variation shall include not only differentiation by a manufacturer in the base price of new motor vehicles, but a manufacturer's use of rebates, credits, or other consideration which has the effect of causing variance in the price of new motor vehicles offered to its franchised dealers located in this State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives; provided, however, that the awarding or amount of any rebates or incentives shall not be based on a violation of sub-subdivisions a., b., c., or d. of this subdivision.

(31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.

(32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles."

Section 4. G.S. 20-305.1 reads as rewritten:

"**§ 20-305.1. Automobile dealer warranty obligations.**

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to

subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the ~~24-month~~ 18-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the ~~claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose.~~ claim. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer actually performed the work and that the work performed was diagnosed as reasonably necessary as determined in accordance with accepted standards in the industry.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections ~~(a) and (b) above and subsection (d) below,~~ (a), (b), or (d) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this

subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner.

(d) Transportation damages. --

(1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.

(4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and

b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

(5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.

(5a) No manufacturer shall fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs made to such motor vehicle while in the possession or under the control of the manufacturer if the cost of such post-manufacturing repairs exceeds three percent (3%) of the manufacturer's suggested retail price. A manufacturer is not required to disclose to a new motor vehicle dealer that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(6) Nothing in this subsection (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier.

(e) Damage/Repair Disclosure. -- Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

(1) A new motor vehicle dealer is not required to disclose to a purchaser that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

(3) For purposes of this section, 'manufacturer's suggested retail price' means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle.

(f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of 'motorcycles' as defined in G.S. 20-4.01(27)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 739
H739-CSLK-4
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: MV Dealers/Manufacturers Lic. Law. (Public)

Sponsors:

Referred to: Judiciary I

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-297.1. Prefiling of franchise agreements and amendments.**

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State shall file with the Commissioner a copy of the franchise and all supplements. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements thereto.

Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:

(1) A copy of the form franchise which incorporates all of the proposed revisions, modifications, and additions;

(2) A separate statement which identifies all substantive revisions, modifications, and additions proposed.

It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article."

Section 2. G.S. 20-301 reads as rewritten:

"**§ 20-301. Powers of Commissioner.**

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or ~~practices.~~ practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the Gene Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where ~~they shall be~~ hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other ~~remedy~~ remedy, bring an action in the name of the State against ~~such~~ that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin ~~such~~ any persons ~~and such other persons~~ from continuing the ~~same.~~ violations.

(e) ~~The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days. The Commissioner may extend the time for discovery beyond 60 days either upon the consent of all parties to the proceeding or upon application of one or more parties to the proceeding for good cause shown.~~ The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section."

Section 3. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

(5) To enter into a franchise establishing additional new motor vehicle dealer or relocating

an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle

dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:

1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
3. Effect on the consuming public in the relevant market area;
4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner ~~must~~ shall try to conduct the hearing and render his final determination ~~as expeditiously as possible, but in any event~~

~~later than~~ if possible, within 180 days after a protest is filed. ~~Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.~~

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

g. For purposes of this subdivision, the addition, creation, or operation of a 'satellite' or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned

or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the ti period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner ~~must~~ shall try to conduct the hearing and render a final determination ~~no later than~~ within 180 days after a petition has been ~~filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to proceeding.~~ filed. If the terminati

cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;

2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress

towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. --

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. --

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and

reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date termination, cancellation or nonrenewa

provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. -- In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or
2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.
3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated ~~family member~~ successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated ~~family member~~ successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is

reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.

6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of

owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and

circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or oth

display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not violated, however, if su

failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all

other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially

prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.

(29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise, unless the dealer principal or dealer operator is an absentee owner who is not involved in the operation of the dealership on a regular basis.

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this state for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility or upon the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the state.

Notwithstanding the foregoing, nothing in this subsection shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance

or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

In the event that at the time of the ratification of this act a manufacturer is currently operating a program or has in effect a policy which would violate this subdivision after the effective date of this act, it shall be lawful for that program or policy to continue in effect as to the manufacturer's franchised dealers located in this state until December 31, 1999. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program as of December 31, 1999 in accordance with the manufacturer's program or policy.

(31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrati proceeding in which a new motor vehicle deal asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.

(32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate training programs which are reasonably necessa

for those dealers to sell or service any model or series of vehicles."

Section 4. G.S. 20-305.1 reads as rewritten:

"**§ 20-305.1. Automobile dealer warranty obligations.**

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to

the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the 24-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the ~~claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose.~~ claim. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer:

(1) Made a good faith attempt to perform the work in compliance with the written policies and procedures of the manufacturer; and

(2) Actually performed the work.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections ~~(a) and (b) above and subsection (d) below,~~ (a), (b), or (d) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties,

subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner.

(d) Transportation damages. --

(1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.

(4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and

b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

(5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the

manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.

(5a) No manufacturer shall fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs made to such motor vehicle while in the possession or under the control of the manufacturer if the cost of such post-manufacturing repairs exceeds three percent (3%) of the manufacturer's suggested retail price. A manufacturer is not required to disclose to a new motor vehicle dealer that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(6) Nothing in this subsection (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier.

(e) Damage/Repair Disclosure. -- Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

(1) A new motor vehicle dealer is not required to disclose to a purchaser that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

(3) For purposes of this section, 'manufacturer's suggested retail price' means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested the manufacturer for each accessory or item

optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle.

(f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of 'motorcycles' as defined in G.S. 20-4.01(27)."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 739 DATE

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

~~Rep.~~)
) Rand
Sen.)

moves to amend the bill on page 29, line 8-1

by adding the following sentence at the beginning of the line:

"The amendment ~~to~~ adding G.S. 20-305(5)(g) as set forth in Section 3 of this act, shall not apply to any vehicle licensed ~~in~~ before October 1, 1997."

SIGNED Tony Rand

ADOPTED adopted 4/3/97 FAILED TABLED

GA-33-A

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 739*
Committee Substitute Favorable 4/28/97
Proposed Committee Substitute H739-PCS7334

Short Title: MV Dealers/Manufacturers Lic. Law. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-297.1. Prefiling of franchise agreements and amendments.**

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State shall file with the Commissioner a copy of the franchise and all supplements. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements thereto. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the

Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:

(1) A copy of the form franchise which incorporates all of the proposed revisions, modifications, and additions;

(2) A separate statement which identifies all substantive revisions, modifications, and additions proposed.

It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article."

Section 2. G.S. 20-301 reads as rewritten:

"**§ 20-301. Powers of Commissioner.**

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or ~~practices.~~ practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where ~~they shall be~~ hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other ~~remedy~~ remedy, bring an action in the name of the State against ~~such~~ that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin ~~such~~ any persons ~~and such other persons~~ from continuing the ~~same.~~ violations.

(e) ~~The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days. The Commissioner may extend the time for discovery beyond 60 days either~~

~~upon the consent of all parties to the proceeding or upon application of one or more parties to the proceeding for good cause shown.~~ The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section."

Section 3. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail,

return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor

vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:

1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
3. Effect on the consuming public in the relevant market area;
4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner ~~must~~ shall try to conduct the hearing and render his final determination ~~as expeditiously as possible, but in any event no later than~~ if possible, within 180 days after a protest is filed. ~~Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.~~

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

g. For purposes of this subdivision, the addition, creation, or operation of a 'satellite' or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and

after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner ~~must~~ shall try to conduct the hearing and render a final determination ~~no later than~~ within 180 days after a petition has been ~~filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to the proceeding.~~ filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

   1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
   2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. --

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or

circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. --

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a

price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or

2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum

equivalent to the reasonable rental value of the dealership facilities for one year.

3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated ~~family member~~ successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated ~~family member~~ successor. Failure by the franchisor to send notice of objection

within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.

6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated

successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall

not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.

(29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise, unless the dealer principal or dealer operator is an absentee owner who is not involved in the operation of the dealership on a regular basis.

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility or upon the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

In the event that at the time of the ratification of this act a manufacturer is currently operating a program or has in effect a policy which would violate this subdivision after the effective date of this act, it shall be lawful for that program or policy to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, 1999. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program as of December 31, 1999, in accordance with the manufacturer's program or policy.

(31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.

(32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles."

Section 4. G.S. 20-305.1 reads as rewritten:

"§ 20-305.1. Automobile dealer warranty obligations.

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's

current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the 24-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the ~~claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose.~~ claim. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer:

(1) Made a good faith attempt to perform the work in compliance with the written policies and procedures of the manufacturer; and

(2) Actually performed the work.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections ~~(a) and (b) above and subsection (d) below,~~ (a), (b), or (d) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner.

(d) Transportation damages. --

(1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.

(4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and

b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

(5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.

(5a) No manufacturer shall fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs made to such motor vehicle while in the possession or under the control of the manufacturer if the cost of such post-manufacturing repairs exceeds three percent (3%) of the manufacturer's suggested retail price. A manufacturer is not required to disclose to a new motor vehicle dealer that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(6) Nothing in this subsection (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier.

(e) Damage/Repair Disclosure. -- Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

(1) A new motor vehicle dealer is not required to disclose to a purchaser that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

(3) For purposes of this section, 'manufacturer's suggested retail price' means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle.

(f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of 'motorcycles' as defined in G.S. 20-4.01(27)."

Section 5. The amendment adding G.S. 20-305(5)(g), as set forth in Section 3 of this act, shall not apply to satellite facilities licensed before October 1, 1997. This act becomes effective October 1, 1997.

North Carolina General Assembly
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May 20, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 739 - MV Dealers/Manufacturers Lic. Law. (2nd Edition)**

House Bill 739 makes several changes to the motor vehicle dealer and manufacturers licensing law.

Section 1 requires franchise agreements and all supplements thereto to be filed with the Commissioner of Motor Vehicles by January 1, 1998. In order to obtain a license, an applicant must prefile a copy of the franchise agreement and all supplements. All revisions and modifications must also be filed within 60 days.

Section 2 requires the Commissioner to investigate any complaint alleging a violation of the franchise laws and provides the mechanism by which a dealer can file a complaint against the manufacturer or distributor and have a hearing on the complaint.

Section 3 defines the circumstances under which the manufacturer or distributor may exercise a right of first refusal to acquire the dealer's assets. The manufacturer must give 30 days written notice of the intent to exercise the right after being advised of the proposed transfer; the dealer will receive equal or greater consideration as under any contract offered; the transfer does not involve a transfer to the dealer's spouse, child, grandchild, brother, sister, parent, or other designated successor; and the manufacturer must pay reasonable expenses incurred by the dealer.

This section also gives the Commissioner flexibility in the time he has to render a decision in a hearing that is held to determine whether a new dealer can enter an existing dealer's market area. Current law requires a decision within 180 days of the time the existing dealer filed the protest. The bill provides that the Commissioner must attempt to render a decision within 180 days. In addition, a provision is added to subject satellite dealerships (where either new cars are sold or manufacturer's warranty work is performed) to the same

market entry requirements as new dealerships. A 180-day decision period for cancellation of a motor vehicle franchise is also changed to require that the Commissioner attempt to render a decision within 180 days.

The bill also prohibits the manufacturer or distributor from (a) requiring the dealer to issue ownership interests in the dealership to a general manager or other persons involved in the dealership, (b) varying the price charged dealers in this State for new motor vehicles because of the dealer's purchase of equipment or other merchandise, the dealer's relocating or remodeling of existing facilities, (c) the dealer's participation in training sponsored by the manufacturer, or (d) the dealer's achievement of specified levels of customer satisfaction. The manufacturer or distributor must offer the entire line of new vehicles to its North Carolina dealers at the lowest prices they are offered to its dealers in other states. In addition, the manufacturer or distributor cannot require the dealer to compensate the manufacturer or distributor for legal fees incurred when a dealer asserts its rights under the motor vehicle franchise law, nor can it require the dealer to pay an additional fee, purchase ad displays, or remodel its facilities to receive any model or series of vehicles.

The bill further prevents a manufacturer from denying or reducing claims for reimbursement for warranty services if the dealer provides sufficient documentation. The bill also provides for a stay of certain payments or charges by the dealer to the manufacturer while administrative proceedings involving manufacturer or distributor warranties are pending.

This act would become effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1059
Committee Substitute Favorable 4/28/97

Short Title: CAMA/Urban Waterfront Redevelop. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE COASTAL AREA MANAGEMENT ACT TO ALLOW CERTAIN TYPES OF REDEVELOPMENT WITHIN URBAN WATERFRONTS THAT HISTORICALLY HAVE A PATTERN OF URBAN-LEVEL DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-120.2. Permits for urban waterfront redevelopment in historically urban areas.**

(a) Notwithstanding any other provision of law, any person may apply to the Commission for a permit for major development granting permission to use the person's land for a nonwater dependent use that is otherwise prohibited by rules, standards, or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. The procedure to apply for the permit shall be as provided by G.S. 113A-119.

(b) Notwithstanding G.S. 113A-120(a), the Commission may grant a permit for nonwater dependent development in public trust areas designated pursuant to G.S. 113A-113(b)(5) if the following criteria are met:

(1) The land is waterfront property located in a municipality.

(2) The land has a history of urban-level development as evidenced by any of the following:

a. The land is an historic place that is listed, or has been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966.

b. The land is an historical, archaeological, and other site owned, managed or assisted by the State of North Carolina pursuant to Chapter 121 of the General Statutes.

c. The land has a central business district zoning classification, or any other classification that may be designated as acceptable by the Commission.

(3) The proposed development is sponsored in part or in whole by the local jurisdiction in which the development would be located for the purpose of significantly increasing public access consistent with the Coastal Area Management guidelines.

(4) The municipality in which the activity would occur has determined that the development will not have a significant adverse impact on the environment.

(5) The development as requested is consistent with a local urban waterfront development plan, local development regulations, public access plans, and other applicable local authority.

(c) Except as otherwise provided by this section, all other provisions of this Article apply to a permit applied for under this section, including the provisions of G.S. 113A-120(b1) and (b2)."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this ~~section,~~ section or of G.S. 113A-120.2, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with

other federal and State laws, regulations, and rules for the protection of the environment."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 1059 DATE _____

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

Rep.)
) BALLANTINE
Sen.)

moves to amend the bill on page 1, line 17

by DELETING THE WORD "MAY" AND SUBSTITUTING THE WORD "SHALL".

SIGNED _____

ADOPTED Adopted FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1059
Committee Substitute Favorable 4/28/97
Proposed Senate Committee Substitute H1059-PCS6287

Short Title: CAMA/Urban Waterfront Redevelop. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE COASTAL AREA MANAGEMENT ACT TO ALLOW CERTAIN TYPES OF REDEVELOPMENT WITHIN URBAN WATERFRONTS THAT HISTORICALLY HAVE A PATTERN OF URBAN-LEVEL DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-120.2. Permits for urban waterfront redevelopment in historically urban areas.**

(a) Notwithstanding any other provision of law, any person may apply to the Commission for a permit for major development granting permission to use the person's land for a nonwater dependent use that is otherwise prohibited by rules, standards, or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. The procedure to apply for the permit shall be as provided by G.S. 113A-119.

(b) Notwithstanding G.S. 113A-120(a), the Commission shall grant a permit for nonwater dependent development in public trust areas designated pursuant to G.S. 113A-113(b)(5) if the following criteria are met:

(1) The land is waterfront property located in a municipality.

(2) The land has a history of urban-level development as evidenced by any of the following:

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June 24, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel

RE: **HOUSE BILL 1059 - COASTAL AREA MANAGEMENT ACT/URBAN WATERFRONT REDEVELOPMENT** - Representative Wright

House Bill 1059 would amend the Coastal Area Management Act (CAMA) to allow for redevelopment in historically urban waterfront areas under certain conditions.

Section 1 of the bill creates a new statutory section to allow a person to obtain a permit to use public trust areas for a nonwater dependent use that would otherwise be prohibited by CAMA under certain conditions. To be eligible for the permit the development must:

1. be located in a municipality.
2. have a history of urban-level development as evidence by recognition as a historic place or be a historical, archaeological or other site involving the State, or the land must have a commercial business district designation.
3. have a determination by the municipality that the use would not have a significant adverse environmental impact.
4. have a development plan consistent with a local waterfront development plan, local development regulations, public access plans and other local authority.

Section 2 makes a conforming technical change.

The bill would be effective when it becomes law.

H1059-SMRU-002

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 113A-120. Grant or denial of permits.

(a) The responsible official or body shall deny an application for a permit upon finding:

(1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.

(2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).

(3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).

(4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).

(5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.

(6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.

(7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.

(8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.

(9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.

(10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.

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VISITOR REGISTRATION SHEET

Commerce 6-24-97

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
B.J. Gaskins	NSPRA
R. Paul Wilms	NCMBA
Roger Schecter	DENR - Coastal
R. Rogers	DENR -
Mary Abernethy	Payne Forest
Tommy Herrelson	NCBDA
SAM JOHNSON	ATTY
ROBERT GLASER	NCADA
Richard J. Vinegar	atty
Stuart Dixon	N.C. Natural Gas Corp.
Harold Webb	Johnson et al
Jamie Cyrus	BPMHL
John Kolinski	Jarvis Bixby & Assoc.
Jack Sands	WCLP
Alene Jennings	N.C. Natural Gas
Ed Powell	AAMA
Miriam Baer	NC Real Estate Commission
Dave Sikpi	CAROLINAS AGC
Tim KENT	American Institute of Architects
Amanda Martin	Everett, Gaskins, Hancock + Stevens
Robin Smith	AGO

VISITOR REGISTRATION SHEET

Commerce Committee — 6-24-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Henry Jones	Attorney - Raleigh
Bill Krueger	NCGA
Lynwood Jones	NCGA
Rep. Bobby Hall	
John A. Leonard Jr.	Ready Executives Pinehurst
Anne Graves Whitaker	NCAR
W.U Martin	NCAR
[illegible]	NCAR
Ellen St Clair	NCAR
Pat Jones	NCAR
[illegible]	NCAR
Bill Stobbs IV	NCBA
Jerry Arrowood	DMV
Charles Cramer	NCATL
David Simmons	ZDA PA
Amy Henderson	Hunton & Williams
V.L McBrayer	NCGA
Kasser Marshall	NyFRNG
Lori A. Harris	SHGRG
Gene Causby	E-ESC
Laura Hartsell	NACIC

VISITOR REGISTRATION SHEET

Commerce Committee — Jan 24 1997

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Mike Carpenter	NCBA
Kim Smith	NCLM
Margie Rhodes	NC House Council
Donna Brown	Oakwood Stables - 2300 Bransford Rd Ral 27614
Rodney E. Clem	CPA
Alan Miles	Bailey & Dixon LLP
Rob Schofield	NCJCDC
John Nash	NCFPC
Anne Tiffit	OSBM

MINUTES
SENATE COMMERCE COMMITTEE
June 26, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building on Thursday, June 26, 1997, at 8:00 a.m. Sixteen members of the committee were present.

Senator Soles, Chairman, called the meeting to order.

CS for HB 408 - AN ACT TO CREATE A FUEL PIPING LICENSE FOR PLUMBING AND HEATING CONTRACTORS, TO AUTHORIZE THE BOARD OF EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS TO CREATE ORHER RESTRICTED LICENSE CLASSIFICATIONS, AND TO ALLOW THE REVOCATION OR SUSPENSION OF A LICENSE FOR FAILURE TO COMPLY WITH RULES PROMULGATED BY THE BOARD.

Rep. Ives, the bill sponsor, explained this bill to the committee. Mr. Stuart Dixon, North Carolina Gas Corporation, spoke in favor of this bill. Sen. Warren moved that this bill be given a favorable report. Motion carried. (See attached memorandum from Committee Counsel for additional information).

HB 672 - AN ACT TO EXEMPT COUNTIES AND CITIES FROM THE STATUTORY REQUIREMENTS REGARDING PUBLIC CONTRACTS WHEN CONSTRUCTING CERTAIN METAL BUILDINGS.

Rep. Hall, the bill sponsor, sent forth a proposed committee substitute and Sen. Reeves moved that it be adopted, motion carried. Rep. Hall then explained the proposed committee substitute to the committee. (See attached memorandum from Committee Counsel for additional information).

Mr. Henry W. Jones, Jr., Carolinas Electrical Contractors Assoc., Inc. spoke to the committee and said that they did support metal buildings.

Mr. Tim Kent, N. C. Membership of Architects, said that the bill does not specify the specific use of these buildings.

There was much discussion and questions by member of the committee about this bill. Sen. Kincaid moved that the bill be referred to a sub-committee, motion carried. The following sub-committee was appointed by Sen. Soles:

Sen. Warren, Chairman,
Sen. Kincaid,
Sen. Ballance,
Sen. Kerr

HB 1074 - AN ACT TO PROHIBIT A PERSON FROM REPRESENTING THAT THE PERSON PROVIDES OR OBTAINS DEBT CONSOLIDATION WHEN THE SERVICE THAT PERSON PRIMARILY PROVIDES IS RELATED TO BANKRUPTCY PROCEEDINGS.

Rep. Hall, the bill sponsor, sent forth a proposed committee substitute and Sen. Ballantine moved that it be adopted, motion carried. There was much discussion and questions by members of the committee as to the constitutionality of the bill and what purpose it would serve. Sen. Shaw moved to give the proposed committee substitute a favorable report. Sen. Ballance made a substitute motion that the proposed committee substitute be sent to a sub-committee, motion carried. (See attached memorandum from Committee Counsel for additional information). Sen. Soles appointed the following sub-committee:

Sen. Lee, Chairman
Sen. Dalton
Sen. Hartsell

HB 940 - AN ACT TO CLARIFY THAT A REAL ESTATE BROKER AND REAL ESTATE SALESPERSON ARE NOT EMPLOYEES WITHIN THE MEANING OF THE WORKERS' COMPENSATION ACT.

Rep. Redwine, the bill sponsor, explained this bill to the committee. A copy of a letter addressed to Sen. Soles from J. Howard Bunn, Chairman, North Carolina Industrial Commission opposing this legislation was passed out to committee members and a copy is attached hereto as part of the minutes. There was much discussion by committee members. Sen. Ledbetter moved to give the bill a favorable report. Sen. Soles told the committee that this bill will be discussed again at our next meeting.

The meeting adjourned at 9:00 a.m.

Sen. R. C. Soles, Jr., Chairman

Janet P. Blalock, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
SEN. R. C. SOLES, JR., Chairman

Thursday, June 26, 1997

SEN. R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **408** Plumbing/Heating Contractors/AB
Sequential Referral: Finance
Recommended Referral: none

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 408
Committee Substitute Favorable 5/15/97

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

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

heating systems or equipment or which, by its installation, may alter or affect the fuel supply to plumbing or heating systems or equipment within the meaning of G.S. 87-21(a).

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

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

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

sprinkler contracting or may accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout.

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

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

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

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

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

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

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

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

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

North Carolina General Assembly
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June 17, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: House Bill 408 (Plumbing/Heating Contractors)

House Bill 408 provides that the Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors must develop a special "fuel piping" license by April 15, 1998, for persons who install fuel piping (i) to supply fuel to plumbing or heating equipment or systems or (ii) that may affect or alter that fuel supply. The license is for persons who do not hold the Class I or Class II plumbing license that would otherwise be required to install fuel piping.

The bill also allows the Board to create other limited licenses for the following:

- For persons who want to practice a specific phase of heating, plumbing, or fire sprinkler contracting
- For persons who want to practice a specific phase of heating, plumbing, or fire sprinkler contracting only as an incidental part of their primary business
- For persons who want to install fuel piping from an approved fuel source on the premises to a point inside the residence

The fee for a limited license cannot exceed the fee charged for a plumbing or heating license. The maximum statutory fee for plumbing or heating licenses varies from $50 to $75, depedning on the size of the city the licensee is from.

The bill also amends G.S. 87-23 to allow the Board to revoke or suspend a license for failure to comply with a Board rule. The language concerning the handling of formal complaints against licensees is also amended to provide for an investigation by the Board of each written complaint of fraud, deceit, gross negligence, incompetence, misconduct, or failure to comply with the laws and rules regulating plumbing, heating, or

fire sprinkler contractors, with any resulting proceedings carried out, as under current law, under the APA.

This act takes effect October 1, 1997.

H408-SMRN-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 672

Short Title: County Construction of Metal Buildings. (Public)

Sponsors: Representatives Hall; Aldridge, Baker, Barbee, Bowie, Buchanan, Capps, Clary, Cole, Creech, Culp, Daughtry, Davis, Decker, Dedmon, Eddins, Gardner, Goodwin, Gulley, Hardy, Hightower, Hill, Howard, H. Hunter, Ives, Jeffus, Justus, Kinney, Kiser, McAllister, McMahan, Mitchell, Moore, Morris, Mosley, Nichols, Owens, Preston, Rayfield, Reynolds, Russell, Starnes, Tolson, Warner, Warwick, Watson, Weatherly, Wilkins, and C. Wilson.

Referred to: Commerce.

March 31, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT COUNTIES AND CITIES FROM THE STATUTORY REQUIREMENTS REGARDING PUBLIC CONTRACTS WHEN CONSTRUCTING CERTAIN METAL BUILDINGS.

The General Assembly of North Carolina enacts:

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

"**§ 143-135.1A. Contracts for the construction of metal buildings.**

This Article does not apply to building contracts in the amount of five hundred thousand dollars ($500,000) or less let by counties, cities, towns, or other subdivisions of the State for metal buildings that are designated by the North Carolina State Building Code as Type IV construction. The Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning these contracts, but the services of the Department of Administration shall be made available to any county, city, town, or other subdivision of the State with regard to these contracts, upon request of the governmental entity."

Section 2. This act becomes effective October 1, 1997, and applies to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 672
Proposed Senate Committee Substitute
H672-CSRO-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: County Construction of Metal Buildings. (Public)

Sponsors:

Referred to:

March 31, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT COUNTIES AND CITIES FROM THE STATUTORY REQUIREMENTS REGARDING PUBLIC CONTRACTS WHEN CONSTRUCTING CERTAIN METAL BUILDINGS, AND TO MAKE CERTAIN FUNDS APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENT HEALTH AND NATURAL RESOURCES NONREVERTING.

The General Assembly of North Carolina enacts:

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

"**§ 143-135.1A. Contracts for the construction of metal buildings.**

This Article does not apply to building contracts in the amount of five hundred thousand dollars ($500,000) or less let by counties, cities, towns, or other subdivisions of the State for metal buildings that are designated by the North Carolina State Building Code as Type IV construction. The Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning these contracts, but the services of the Department of Administration shall be made available to any county, city, town, or other

subdivision of the State with regard to these contracts, upon request of the governmental entity."

Section 2. Sec. 27.18. of Chapter 18 of the 1996 Second Extra Session Laws reads as rewritten:

"PILOT PRIVATIZATION PROJECT FOR CONSTRUCTION OF FORESTRY BUILDINGS

Sec. 27.18. Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of one hundred fifty thousand dollars ($150,000) for the 1996-97 fiscal year shall be placed in a nonreverting reserve within the Department, and the Department shall, as part of a pilot project, enter into a contract with a county to construct a forestry headquarters building in that county. The contract shall provide: that the county may contract with a private for-profit or nonprofit firm for the construction of a building at least 2,300 square feet in size to consist of, at a minimum, a storage unit and an office area and to include a surfaced driveway and parking area and utility services; that the county shall submit the design plans and specifications to the Department of Insurance, ~~the Office of State Construction,~~ and the Secretary of Environment, Health, and Natural Resources for review and approval; that the State shall not lease any State-owned land to the county for the building prior to the Department of Insurance, ~~the Office of State Construction,~~ and the Secretary of Environment, Health, and Natural Resources approving the design plans and specifications; that the Department of Insurance, ~~the Office of State Construction,~~ and the Secretary of Environment, Health, and Natural Resources shall inspect and review the project during construction and at the completion of construction to ensure that the building is suitable for its intended use and to determine whether the building is suitable for acquisition by the State; that the Department shall not reimburse the county from the reserve until the Department of Insurance, ~~the Office of State Construction,~~ and the Secretary of Environment, Health, and Natural Resources determine that the building is suitable for acquisition by the State; that the State shall lease to the county any land the State owns that is needed for siting the building and its appurtenances, and, prior to the Department reimbursing the county from the reserve, the county shall transfer to the State for no additional consideration such property, the building, and its appurtenances; and that, prior to the Department reimbursing the county from the reserve, the county shall transfer to the State for no additional consideration any land the county owns that is needed for siting

the building and its appurtenances, the building, and its appurtenances. It is the intent of the General Assembly that the General Assembly shall not appropriate additional funds for this pilot project and that the county in which the forestry headquarters building is to be located shall be responsible for all costs in excess of one hundred fifty thousand dollars ($150,000), including those costs related to the county purchasing any new land necessary for siting the building and its appurtenances and those costs related to constructing and equipping this building and its appurtenances. No later than December 15, 1996, and again no later than April 15, 1997, the Department shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the progress of this pilot project and shall include in both reports the Department's findings and recommendations on the desirability and feasibility of expanding this project to the construction of forestry buildings in other counties."

Section 3. Section 2 of this act becomes effective June 30, 1997. The remainder of this act becomes effective October 1, 1997, and applies to contracts entered into on or after that date.

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Raleigh, NC 2760
(919) 733-2578

June 2, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **House Bill 672 - County Construction of Metal Buildings. (Rep. Hall)**

House Bill 672 adds a new section to Chapter 143 to exempt counties and cities from the statutory requirements regarding public contracts of $500,000 or less, when constructing metal buildings designated as type IV construction under the State Building Code. The Department of Administration will have no duties regarding these contracts, but shall provide assistance upon the request of the governmental entity.

This act becomes effective October 1, 1997, and applies to contracts entered on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE Bill 1074

Short Title: Representations to Consolidate Debts. (Public)

Sponsors: Representatives Hall; Baker Barbee, Bonner, Capps, Clary, Creech, Culp, Davis, Eddins, Fox, Grady, Hiatt, Hill, Justus, Kinney, Kiser, Mitchell, Mosley, Prston, Rayfield, Starnes, Tallent, Weatherly, and Womble.

Referred to: Commerce, if favorable, Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT A PERSON FROM REPRESENTING THAT THE PERSON PROVIDES OR OBTAINS DEBT CONSOLIDATION WHEN THE SERVICE THAT PERSON PRIMARILY PROVIDES IS RELATED TO BANKRUPTCY PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Representation of providing or obtaining debt consolidation.**

(a) No person, firm, or corporation engaged in commerce shall, in connection with the sale or solicitation for sale of any service, represent that the person, firm, or corporation obtains or provides debt consolidation when the service that person primarily obtains or provides is related to bankruptcy proceedings without clearly disclosing that the person primarily obtains or provides services related to bankruptcy proceedings.

(b) To the extent that representations of the type governed by this section are broadcast by radio or television or carried by cable-television, the required disclosure shall be clearly and prominently disclosed.

(c) Nothing in this section shall create any liability for acts by the publisher, owner, agent, or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium arising out of the publication or

dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent, or employee did not know that the advertisement or promotion violated the requirements of this section."

Section 2. This act becomes effective October 1, 1997, and applies to violations that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE Bill 1074
Proposed Senate Committee Substitute
H1074-CSRO-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Representations to Consolidate Debts. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT A PERSON FROM REPRESENTING THAT THE PERSON PROVIDES OR OBTAINS DEBT CONSOLIDATION WHEN THE SERVICE THAT PERSON PRIMARILY PROVIDES IS RELATED TO BANKRUPTCY PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"§ 75-36. Representation of providing or obtaining debt consolidation.

(a) No person, firm, or corporation engaged in commerce shall, in connection with the sale or solicitation for sale of any service, represent that the person, firm, or corporation obtains or provides debt consolidation when the service that person primarily obtains or provides is related to bankruptcy proceedings without clearly disclosing that the person primarily obtains or provides services related to bankruptcy proceedings. For purposes of the section, "commerce" includes all business activities, however denominated, including professional services rendered by a member of a learned profession.

(b) To the extent that representations of the type governed by this section are broadcast by radio or television or carried by cable-television, the required disclosure shall be clearly and prominently disclosed.

(c) Nothing in this section shall create any liability for acts by the publisher, owner, agent, or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium arising out of the publication or dissemination of any advertisement or promotion governed by this section."

Section 2. This act becomes effective October 1, 1997, and applies to violations that occur on or after that date.

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June 2, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 1074 - Representations to Consolidate Debt. (Rep. Hall)**

House Bill 1074 adds a new section G.S. 75-36, which prohibits any person, firm or corporation engaged in commerce from making a representation, in connection with the sale or solicitation for sale of any service, indicating that the person, firm or corporation can obtain or provide debt consolidation for its customers, when in fact, the service actually being provided is related to bankruptcy, without clearly disclosing that fact. The bill further requires that the disclosure be clearly and prominently disclosed when the representation is being broadcast by radio or television. The bill states that this new section does not create liability for acts by publishers, owners, agents, or employees of various media in cases in which such persons did not know that an advertisement or promotion violated the section.

This act becomes effective October 1, 1997, and applies to violations that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 940

Short Title: Worker's Compensation/Realtor Status. (Public)

Sponsors: Representatives Redwine; Boyd-McIntyre, Clary, Decker, Dedmon, Hill, Howard, McComas, McMahan, Sherrill, Smith, Thompson, and Wainwright.

Referred to: Commerce, if favorable, Insurance.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A REAL ESTATE BROKER AND REAL ESTATE SALESPERSON ARE NOT EMPLOYEES WITHIN THE MEANING OF THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-2(2) reads as rewritten:

"(2) Employee. -- The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national guard, except when called into the

service of the United States, and members of the North Carolina State guard, and members of these organizations shall be entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee as herein defined of a municipality, county, or of the State of North Carolina while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation specifically excluding such executive officer in such contract of insurance and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty

members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term employee shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State approved mission pursuant to Article 11 of Chapter 143B.

Employee shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Employee shall not include any person who satisfies both of the following conditions:

a. The person is a real estate broker or real estate salesman within the meaning of G.S. 93A-2.

b. The person is an independent contractor within the meaning of section 3508 of the Internal Revenue Code, as defined in G.S. 105-228.90.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article."

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

Bernadine S. Bellance, Commissioner
Thomas J. Bolch, Commissioner
Laura K. Mavretic, Commissioner
Dianne C. Sellers, Commissioner

James B. Hunt Jr., Governor
J. Howard Bunn Jr., Chairman
Coy M. Vance, Commissioner
J. Randolph Ward, Commissioner

North Carolina Industrial Commission

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Internet Address: http://www.comp.state.nc.us/

June 4, 1997

Honorable Robert Charles Soles, Jr.
Senator
North Carolina State Senate
Room 2022
Legislative Building
Raleigh, North Carolina 27806-2808

RE: House Bill 940

Dear Senator Soles:

The North Carolina Industrial Commission opposes House Bill 940 for the following reasons:

1. Creating coverage exceptions such as those proposed by House Bill 940 undermines the Workers' Compensation Act and invites others to follow suit.

2. The "employee" definition pursuant to the current law, North Carolina General Statute Section 97-2(2), is a comprehensive good law and needs no further amendment. If an individual is an "independent contractor," the current law per the decision of the courts, holds that this individual is not an "employee" if that individual meets the criteria of this established case law.

3. Creating this type of exception to the Workers' Compensation Act is bad for both employers and employees. Employer's become subject to tort actions and employees, e.g. salesmen who are injured in the scope and course of employment are without compensation and medical coverage under the Workers' Compensation Act. The National Commission on State Workers' Compensation Laws in its landmark study, advocated broad coverage, not exceptions such as this, which are wrong headed.

Should you need for me to testify before the Commerce Committee I should be pleased to do so.

Thank you for consideration of these comments.

Respectfully,

J. Howard Bunn, Jr.
Chairman

JHB:jmf

END

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June 24, 1997

MEMORANDUM

TO: Senate Commerce Committee

FROM: Linwood Jones, Staff Counsel

RE: House Bill 940 (Workers Comp/Realtors)

House Bill 940 provides that real estate salespersons and brokers (hereinafter "agents") are not, for workers' compensation purposes, employees of the brokers with whom they contract if they are salespersons or brokers as defined in the real estate laws and independent contractors as defined in the Internal Revenue Code (for withholding purposes). As a result, the broker would not be *required* to carry workers' compensation coverage on those agents.

The Internal Revenue Code recognizes real estate agents as independent contractors for tax withholding purposes (assuming certain criteria are met).

House Bill 940 preserves the right of the broker to *elect* to carry workers' compensation coverage on the agents. Many brokers may make this election because it limits an agent injured on the job exclusively to recovery under the Workers' Compensation Act. A broker that decides to carry workers' compensation coverage can, with the consent of the salesperson, pass the costs of coverage on to the salespersons as authorized by G.S. 93A-11, enacted in 1995.

This bill take effect when it becomes law.

H940-SMRN-002

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

Commerce — 6-26-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Stuart Dixon	N.C. National Gas Corp.
Henry Jones	Attorney Raleigh
Jim Kent	American Institute of Architects
L. Rogers	EHNR
Thomas Stanford	EHNR/DFR
Joyce Hall	EHNR/DFR
[illegible]	NC AFL-CIO
Richard Wilms	NCHISA
Harold Webb	Johnson, Vaughan et al
Rob Rz	NCADA
Robin Smith	AGO
Bill Cobb	NCBA
Sparo Pleggas	State Const Office
Jim Lore	Lore & Mc Clure
Dick Taylor	NCAA
Rob Schofield	NCJCDC
John Hine	Attorney
Grant Williams	Gov's Office

MINUTES
SENATE COMMERCE COMMITTEE
July 8, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building on Tuesday, July 8, 1997, at 10:00 a.m. Seventeen members of the Committee were present. A Visitor Registration Sheet is attached listing others attending the meeting.

Senator R. C. Soles, Jr., called the meeting to order.

The following bills were considered by the Committee:

C.S. for HB 617, AN ACT TO CLARIFY THAT SCHOOL BUSES AND SCHOOL ACTIVITY BUSES MAY NOT COMPETE WITH THE PRIVATE SECTOR.

Since the bill sponsor, Representative Sherrill, was out of town, she had requested that Senator Hoyle handle the bill in Committee. He asked Mr. Gene Causby to explain the purpose of the legislation. Mr. Causby said the bill was to clarify existing law to provide that school buses and school activity buses not compete with the private sector. (See copy of memorandum from Committee Counsel dated July 7, 1997, for additional information.) He said the County Commissioners Association and the State Board of Education had no opposition to the bill.

Senator Hoyle moved that C. S. for HB 617 be given a favorable report. Motion carried.

HB 1006, AN ACT TO INCREASE THE EXEMPTION FOR ANNOUNCING REQUIREMENTS OF CAPITAL IMPROVEMENT PROJECT DESIGNS.

Since the House of Representatives was in Session, Representative Davis asked Senator Carpenter to handle the bill before the Committee. Senator Carpenter said Article 3D of Chapter 143 of the General Statutes requires announcement by the State and its subdivisions of all requirements for architectural, engineering, and surveying services. State Capital Improvement Projects or $50,000 or less are exempt from this requirement. This will would change from $50,000 to $100,000 estimated cost the State Capital Improvements Projects that are exempt from the announcement requirement. (See attached copy of memorandum from Committee Counsel for additional information.)

Senator Warren moved that HB 1006 be given a favorable report. Motion carried.

HB 672, AN ACT TO EXEMPT COUNTIES AND CITIES FROM THE STATUTORY REQUIREMENTS REGARDING PUBLIC CONTRACTS WHEN CONSTRUCTING CERTAIN METAL BUILDINGS.

Senator Warren, Chairman of the Subcommittee studying the bill, said the subcommittee had met several times and had agreed on changes proposed in a Committee Substitute. He moved the adoption of the Proposed Committee for House Bill 672. Motion carried. Following an explanation of the Proposed Committee Substitute by Committee Counsel, Karen Cochrane Brown, Senator Warren moved that the Committee Substitute for House Bill 672 be given a favorable report. Motion carried.

The meeting adjourned at 10:25 a.m.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Tuesday, July 08, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS#1)**617** No Competition by School Bus.
Sequential Referral: None
Recommended Referral: None

H.B. **1006** State Capital Improvement Projects.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1059** Cama/Urban Waterfront Redevelop.
Draft Number: PCS6287
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Wednesday, July 09, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **672** Country Construction of Metal Buildings.

Draft Number:	PCS 7344
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 617
Committee Substitute Favorable 4/28/97

Short Title: No Competition by School Bus. (Public)

Sponsors:

Referred to:

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT SCHOOL BUSES AND SCHOOL ACTIVITY BUSES MAY NOT COMPETE WITH THE PRIVATE SECTOR.

Whereas, public school buses are purchased with tax revenue, are insured under the State's program of self-insurance, use motor fuel that is exempt from the per gallon motor fuel excise tax, are exempt from local property taxes, and are driven by individuals who are trained at State expense; and

Whereas, public school activity buses enjoy many of these same advantages; and

Whereas, private sector businesses that provide transportation services do not enjoy any of these tax, insurance, and driver training advantages; and

Whereas, because of these differences in private sector transportation businesses and public school transportation services, it would be unfair to allow school buses and school activity buses to compete against private sector businesses in providing transportation services; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-58 reads as rewritten:

"**§ 66-58. Sale of merchandise <u>or services</u> by governmental units.**

(a) Except as may be provided in this section, it shall be unlawful for any unit, department or agency of the State government, or any division or subdivision of any such unit, department or agency, or any individual employee or employees of any such unit, department or agency in his, or her, or their capacity as employee or employees thereof, to engage directly or indirectly in the sale of goods, wares or

merchandise in competition with citizens of the State, or to engage in the operation of restaurants, cafeterias or other eating places in any building owned by or leased in the name of the State, or to maintain service establishments for the rendering of services to the public ordinarily and customarily rendered by private enterprises, or to provide transportation services, or to contract with any person, firm or corporation for the operation or rendering of any such businesses or services on behalf of any such unit, department or agency, or to purchase for or sell to any person, firm or corporation any article of merchandise in competition with private enterprise. The leasing or subleasing of space in any building owned, leased or operated by any unit, department or agency or division or subdivision thereof of the State for the purpose of operating or rendering of any of the businesses or services herein referred to is hereby prohibited.

(b) The provisions of subsection (a) of this section shall not apply to:

(1) Counties and municipalities.

(2) The Department of Human Resources, the Department of Environment, Health, and Natural Resources, or the Department of Agriculture for the sale of serums, vaccines, and other like products.

(3) The Department of Administration, except that said agency shall not exceed the authority granted in the act creating the agency.

(4) The State hospitals for the insane.

(5) The Department of Human Resources.

(6) The North Carolina School for the Blind at Raleigh.

(7) The North Carolina Schools for the Deaf.

(8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State College, and the other schools and colleges for higher education maintained or supported by the State, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

(9) The Department of Environment, Health, and Natural Resources, except that said Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.

(10) Child-caring institutions or orphanages receiving State aid.

(11) Highlands School in Macon County.

(12) The North Carolina State Fair.

(13) Rural electric memberships corporations.

(13a) State Farm Operations Commission.

(13b) The Department of Agriculture with regard to its lessees at farmers' markets operated by the Department.

(13c) The Western North Carolina Agricultural Center.

(14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided such leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for such tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase such supplies.

(16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In

addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

Such services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by such institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by such institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

(17) The North Carolina Global TransPark Authority or a lessee of the Authority.

(18) The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70.

(c) The provisions of subsection (a) shall not prohibit:

(1) The sale of products of experiment stations or test farms.

(2) The sale of learned journals, works of art, books or publications of the Department of Cultural Resources or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.

(3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase 'operation of endowment funds' shall include the operation by public postsecondary educational institutions of campus stores, the profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of such stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students of the campus at which a campus store is located and their immediate families, to duly enrolled students of other campuses of the University of North Carolina other than the campus at which the campus store is located, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing

with stores operated in the communities surrounding the campuses of the University of North Carolina.

(4) The operation of lunch counters by the Department of Human Resources as blind enterprises of the type operated on January 1, 1951, in State buildings in the City of Raleigh.

(5) The operation of a snack bar and cafeteria in the State Legislative Building.

(6) The maintenance by the prison system authorities of eating and sleeping facilities at units of the State prison system for prisoners and for members of the prison staff while on duty, or the maintenance by the highway system authorities of eating and sleeping facilities for working crews on highway construction or maintenance when actually engaged in such work on parts of the highway system.

(7) The operation by penal, correctional or facilities operated by the Department of Human Resources or by the State Department of Agriculture, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting such inmates or clients, and other bona fide visitors.

(8) The sale by the Department of Agriculture of livestock, poultry and publications in keeping with its present livestock and farm program.

(9) The operation by the public schools of school cafeterias.

(9a) The use of a public school bus or public school activity bus for a purpose allowed under G.S. 115C-242 or the use of a public school activity bus for a purpose authorized by G.S. 115C-247.

(10) Sale by any State correctional or other institution of farm, dairy, livestock or poultry products raised or produced by it in its normal operations as authorized by the act creating it.

(11) The sale of textbooks, library books, forms, bulletins, and instructional supplies by the State Board of Education, State Department of Public Instruction, and local school authorities.

(12) The sale of North Carolina flags by or through the auspices of the Department of Administration, to the citizens of North Carolina.

(13) The operation by the Department of Correction of forestry management programs on State-owned lands, including the sale on the open market of timber cut as a part of such management program.

(14) The operation by the Department of Correction of facilities to manufacture and produce traffic and street name signs for use on the public streets and highways of the State.

(15) The operation by the Department of Correction of facilities to manufacture and produce paint for use on the public streets and highways of the State.

(16) The performance by the Department of Transportation of dredging services for a unit of local government.

(17) The sale by the State Board of Elections to political committees and candidate committees of computer software designed by or for the State Board of Elections to provide a uniform system of electronic filing of the campaign finance reports required by Article 22A of Chapter 163 of the General Statutes and to facilitate the State Board's monitoring of compliance with that Article. This computer software for electronic filing of campaign finance reports shall not exceed a cost of one hundred dollars ($100.00) to any political committee or candidate committee without the State Board of Elections first notifying in writing the Joint Legislative Commission on Governmental Operations.

(d) A department, agency or educational unit named in subsection (b) shall not perform any of the prohibited acts for or on behalf of any other department, agency or educational unit.

(e) Any person, whether employee of the State of North Carolina or not, who shall violate, or participate in the violation of this section, shall be guilty of a Class 1 misdemeanor.

(f) Notwithstanding the provisions of G.S. 66-58(a), the operation by the Department of Correction of facilities for the manufacture of any product or the providing of any service pursuant to G.S. 148-70 not regulated by the provisions of subsection (c) hereof, shall be subject to the prior approval of the Governor, with biennial review by the General Assembly, at the beginning of each fiscal year commencing after October 1, 1975. The Department of Correction shall file with the Director of the Budget quarterly reports detailing prison enterprise operations in such a format as shall be required by the Director of the Budget.

(g) The North Carolina School of Science and Mathematics may engage in any of the activities permitted by G.S. 66-58(b)(8) and (c)(3)."

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

North Carolina General Assembly
Legislative Services Office

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July 7, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 617 - No Competition by School Bus. (Second Edition)**

House Bill 617 amends G.S. 66-58 (the Umstead Act) to clarify that school buses and school activity buses may not compete with the private sector. Under present law, it is unlawful for any unit of State government or any employee of State government to engage in the sale of goods or the operation of a restaurant or other eating places in State buildings, to maintain service establishments which compete with private businesses that provide the same services to the public, or to contract with someone to render such services. Violation of this act by a person, whether a State employee or not, is a Class 1 misdemeanor.

This bill adds providing transportation services as a prohibited form of competition. However, the bill exempts public school buses and public school activity buses which are used in accordance with law, from the act. Lawful uses of school buses include transportation of students and employees to and from school, emergency transportation of students or employees to a doctor or hospital, transportation of students with special needs to receive vocational or occupational services, and use for emergency management purposes during a declared disaster or local emergency.

This bill is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1006

Short Title: State Capital Improvement Projects. (Public)

Sponsors: Representatives Davis, Ives; Capps, Culp, Hardy, Sexton, and Starnes.

Referred to: State Government, if favorable, Appropriations.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE EXEMPTION FOR ANNOUNCING REQUIREMENTS OF CAPITAL IMPROVEMENT PROJECT DESIGNS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.34 reads as rewritten:

"**§ 143-64.34. Exemption of certain State Capital Improvement Projects.**

State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than ~~fifty thousand dollars ($50,000)~~ one hundred thousand dollars ($100,000) are exempt from the provisions of this Article."

Section 2. This act becomes effective October 1, 1997, and only applies to State Capital Improvement Projects for which designers or consultants are selected for approval on or after that date.

North Carolina General Assembly
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July 8, 1997

MEMORANDUM

TO: **Senate Committee on Commerce**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 1006; State Capital Improvement Projects**

Article 3D of Chapter 143 of the General Statutes requires announcement by the State and its subdivisions of all requirements for architectural, engineering, and surveying services. State Capital Improvement Projects of $50,000 or less are exempt from this requirement.

House Bill 1006 would change from $50,000 to $100,000 estimated cost the State Capital Improvements Projects that are exempt from the announcement requirement.

House Bill 1006 would become effective October 1, 1997, and apply to State Capital Improvement Projects for which designers or consultants are selected for approval on or after that date.

H1006-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 672

Short Title: County Construction of Metal Buildings. (Public)

Sponsors: Representatives Hall; Aldridge, Baker, Barbee, Bowie, Buchanan, Capps, Clary, Cole, Creech, Culp, Daughtry, Davis, Decker, Dedmon, Eddins, Gardner, Goodwin, Gulley, Hardy, Hightower, Hill, Howard, H. Hunter, Ives, Jeffus, Justus, Kinney, Kiser, McAllister, McMahan, Mitchell, Moore, Morris, Mosley, Nichols, Owens, Preston, Rayfield, Reynolds, Russell, Starnes, Tolson, Warner, Warwick, Watson, Weatherly, Wilkins, and C. Wilson.

Referred to: Commerce.

March 31, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT COUNTIES AND CITIES FROM THE STATUTORY REQUIREMENTS REGARDING PUBLIC CONTRACTS WHEN CONSTRUCTING CERTAIN METAL BUILDINGS.

The General Assembly of North Carolina enacts:

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

"**§ 143-135.1A. Contracts for the construction of metal buildings.**

This Article does not apply to building contracts in the amount of five hundred thousand dollars ($500,000) or less let by counties, cities, towns, or other subdivisions of the State for metal buildings that are designated by the North Carolina State Building Code as Type IV construction. The Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning these contracts, but the services of the Department of Administration shall be made available to any county, city, town, or other subdivision of the State with regard to these contracts, upon request of the governmental entity."

Section 2. This act becomes effective October 1, 1997, and applies to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 672
Proposed Senate Committee Substitute
H672-CSRO-002
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: County Construction of Metal Buildings. (Public)

Sponsors:

Referred to:

March 31, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN FUNDS APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENT HEALTH AND NATURAL RESOURCES NONREVERTING.

The General Assembly of North Carolina enacts:

Section 1. Sec. 27.18. of Chapter 18 of the 1996 Second Extra Session Laws reads as rewritten:

"**PILOT PRIVATIZATION PROJECT FOR CONSTRUCTION OF FORESTRY BUILDINGS**

Sec. 27.18. Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of one hundred fifty thousand dollars ($150,000) for the 1996-97 fiscal year shall be placed in a <u>nonreverting</u> reserve within the Department, and the Department shall, as part of a pilot project, enter into a contract with a county to construct a forestry headquarters building in that county. The contract shall provide: that the county may contract with a private for-profit or nonprofit firm for the construction of a building at least 2,300 square feet in size to consist of, at a minimum, a storage unit and an office area and to include a surfaced driveway and parking area and utility services; that the county

shall submit the design plans and specifications to the Department of Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources for review and approval; that the State shall not lease any State-owned land to the county for the building prior to the Department of Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources approving the design plans and specifications; that the Department of Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources shall inspect and review the project during construction and at the completion of construction to ensure that the building is suitable for its intended use and to determine whether the building is suitable for acquisition by the State; that in carrying out their responsibilities under this provision, all parties shall act in good faith; that the Department shall not reimburse the county from the reserve until the Department of Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources determine that the building is suitable for acquisition by the State; that the State shall lease to the county any land the State owns that is needed for siting the building and its appurtenances, and, prior to the Department reimbursing the county from the reserve, the county shall transfer to the State for no additional consideration such property, the building, and its appurtenances; and that, prior to the Department reimbursing the county from the reserve, the county shall transfer to the State for no additional consideration any land the county owns that is needed for siting the building and its appurtenances, the building, and its appurtenances. It is the intent of the General Assembly that the General Assembly shall not appropriate additional funds for this pilot project and that the county in which the forestry headquarters building is to be located shall be responsible for all costs in excess of one hundred fifty thousand dollars ($150,000), including those costs related to the county purchasing any new land necessary for siting the building and its appurtenances and those costs related to constructing and equipping this building and its appurtenances. No later than December 15, ~~1996,~~ 1997, and again no later than April 15, ~~1997,~~ 1998, the Department shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the progress of this pilot project and shall include in both reports the Department's findings and recommendations on

the desirability and feasibility of expanding this project to the construction of forestry buildings in other counties."

Section 2. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 672
Proposed Senate Committee Substitute H672-PCS7344

Short Title: County Construction of Metal Buildings. (Public)

Sponsors:

Referred to:

March 31, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN FUNDS APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES NONREVERTING.

The General Assembly of North Carolina enacts:

Section 1. Sec. 27.18 of Chapter 18 of the 1996 Second Extra Session Laws reads as rewritten:

"PILOT PRIVATIZATION PROJECT FOR CONSTRUCTION OF FORESTRY BUILDINGS

Sec. 27.18. Of the funds appropriated in this act to the Department of Environment, Health, and Natural Resources, the sum of one hundred fifty thousand dollars ($150,000) for the 1996-97 fiscal year shall be placed in a nonreverting reserve within the Department, and the Department shall, as part of a pilot project, enter into a contract with a county to construct a forestry headquarters building in that county. The contract shall provide: that the county may contract with a private for-profit or nonprofit firm for the construction of a building at least 2,300 square feet in size to consist of, at a minimum, a storage unit and an office area and to include a surfaced driveway and parking area and utility services; that the county shall submit the design plans and specifications to the Department of Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources for review and approval; that the State shall not lease any State-owned land to the county for the building prior to the Department of Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources

approving the design plans and specifications; that the Department of Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources shall inspect and review the project during construction and at the completion of construction to ensure that the building is suitable for its intended use and to determine whether the building is suitable for acquisition by the State; that in carrying out their responsibilities under this provision, all parties shall act in good faith; that the Department shall not reimburse the county from the reserve until the Department of Insurance, the Office of State Construction, and the Secretary of Environment, Health, and Natural Resources determine that the building is suitable for acquisition by the State; that the State shall lease to the county any land the State owns that is needed for siting the building and its appurtenances, and, prior to the Department reimbursing the county from the reserve, the county shall transfer to the State for no additional consideration such property, the building, and its appurtenances; and that, prior to the Department reimbursing the county from the reserve, the county shall transfer to the State for no additional consideration any land the county owns that is needed for siting the building and its appurtenances, the building, and its appurtenances. It is the intent of the General Assembly that the General Assembly shall not appropriate additional funds for this pilot project and that the county in which the forestry headquarters building is to be located shall be responsible for all costs in excess of one hundred fifty thousand dollars ($150,000), including those costs related to the county purchasing any new land necessary for siting the building and its appurtenances and those costs related to constructing and equipping this building and its appurtenances. No later than December 15, ~~1996,~~ 1997, and again no later than April 15, ~~1997,~~ 1998, the Department shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the progress of this pilot project and shall include in both reports the Department's findings and recommendations on the desirability and feasibility of expanding this project to the construction of forestry buildings in other counties."

Section 2. This act becomes effective June 30, 1997.

VISITOR REGISTRATION SHEET

[redacted] 7-8-97

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
V.L. McBride	NBA
George Stephanopoulos	NYC
Paul Stock	NC Bankers Assn.
Tim KENT	American Institute of Architects
Phil Mickelson	PGA
M. Joe Carpenter	NCHBA
Paul Wilms	NCHBA
Curt Williams	Gov's Office
David Anders	DI-Fax
[redacted] Hartley	Lean's Office
Nancy Bradley	NCCBI
BH Gibson	NCSBA
Alice Thorpe	State Construction
Paul Butler	N.C. Sentinel
Tom Bean	NC Wildlife Federation
Emily Saunders	NC Wildlife Federation
Michelle Nowlin	Southern Environmental Law Center
K ROGERS	DENR
Joe Oliver	Sierra Club / CCNC
Robert Paschal	Young, Moore & Henderson, P.A.
Joyce Peters	Electricities
[redacted] Carlton Mynard	State Const. Office

MINUTES
SENATE COMMERCE COMMITTEE
July 16, 1997

The Senate Commerce Committee met at Senator Soles' Desk in the Senate Chamber on Wednesday, July 16, 1997, at 11:25 a.m. Ten members of the Committee were present.

Senator Soles, Chairman, called the meeting to order.

The following bill was considered by the Committee:

SB 592, AN ACT TO APPROPRIATE FUNDS FOR PUBLIC PURPOSES.

Senator Lee moved the adoption of a Committee Substitute for SB 592 entitled AN ACT TO PROVIDE FOR THE RELOCATION AND CARE OF THOSE ABANDONED CEMETERIES SELECTED FOR RELOCATION BY THE ARCHAEOLOGY AND HISTORIC PRESERVATION SECTION OF THE DEPARTMENT OF CULTURAL RESOURCES. Motion carried.

Senator Soles explained the Committee Substitute. He said the bill authorizes the Archaeology and Historic Preservation Section of the Division of Archives and History, Department of Cultural Resources to administer the relocation of the abandoned public cemeteries program. (See attached memorandum prepared by Karen Cochrane Brown, Committee Co-Counsel for complete explanation.) Senator Lee moved that the Committee Substitute for SB 592 be given a favorable report. Motion carried.

The meeting adjourned at 11:30 a.m.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Thursday, July 17, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **592** Funds for Public Purposes.

Draft Number:	PCS1845
Sequential Referral:	None
Recommended Referral:	Appropriations
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 592

Short Title: Funds for Public Purposes. (Public)

Sponsors: Senator Soles.

Referred to: Rules and Operations of the Senate.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS FOR PUBLIC PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. There is appropriated from the General Fund a sum for the 1997-98 fiscal year for public purposes.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 592
Proposed Committee Substitute S592-PCS1845

Short Title: Relocate Abandoned Cemeteries. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE RELOCATION AND CARE OF THOSE ABANDONED CEMETERIES SELECTED FOR RELOCATION BY THE ARCHAEOLOGY AND HISTORIC PRESERVATION SECTION OF THE DEPARTMENT OF CULTURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 65 of the General Statutes is amended by adding an Article after Article 1 to read:

"ARTICLE 1A.

"Relocation of Abandoned Cemeteries.

"**§ 65-3.1. Purpose.**

The purpose of this Article is to stop the loss of abandoned public cemeteries by vandalism, logging, plowing, and other causes, to relocate certain abandoned cemeteries on a county-by-county basis, and to provide for the perpetual care of these relocated cemeteries, thereby preserving their historic significance.

"**§ 65-3.2. Administration of program.**

The Archaeology and Historic Preservation Section of the Division of Archives and History, Department of Cultural Resources, shall administer the relocation of abandoned public cemeteries program.

"**§ 65-3.3. Selection for relocation.**

(a) The Archaeology and Historic Preservation Section shall select those abandoned cemeteries that, according to the Section, need relocation. The

Archaeology and Historic Preservation Section may rely on the list of abandoned public cemeteries compiled pursuant to G.S. 65-1.

(b) From this selection, the Archaeology and Historic Preservation Section shall create a list of counties that contain the selected abandoned cemeteries and rank those counties according to need for relocation of abandoned cemeteries within each county.

(c) The Section shall relocate the selected abandoned cemeteries in the first county on the list compiled under subsection (b) of this section until all selected abandoned cemeteries within that county have been relocated. As long as funds are available, the Section shall relocate the selected abandoned cemeteries in the remaining counties on the list in order of ranking.

"§ 65.3.4. Contractor to perform relocation.

(a) The Archaeology and Historic Preservation Section shall receive written bids for the relocation program from any person, firm, or corporation that:

(1) Is licensed in North Carolina for the practice of funeral directing or funeral service pursuant to G.S. 90-210.25;

(2) Has been engaged in the business of cemetery relocation for the previous 10 years; and

(3) Is qualified to relocate cemeteries based on past experience, reputation, and other qualifications known to the Section.

(b) The Archaeology and Historic Preservation Section of the Department of Cultural Resources shall review the proposals and select a person, firm, or corporation to perform the relocation of the selected abandoned cemeteries. The State and this contractor shall enter into a negotiated service contract.

(c) In lieu of requiring a performance bond from the contractor, the Archaeology and Historic Preservation Section shall withhold at least ten percent (10%) of the compensation to be paid according to the terms of the negotiated service contract until the contractor has completed all of his obligations under the contract. No performance bond may be required from the contractor.

(d) The total amount to be paid the contractor under the terms of the negotiated service contract may not exceed the amount of monies available to the Department for this purpose. This amount shall equal the current appropriation less:

(1) The costs incurred by the Archaeology and Historic Preservation Section in carrying out the provisions of this Article; and

(2) The costs to purchase, pursuant to G.S. 65-3.5(a), the properties to which the selected abandoned cemeteries will be relocated.

"§ 65-3.5. Duties of the contractor.

(a) Upon the approval of the Archaeology and Historic Preservation Section, the contractor shall select the sites to which the abandoned cemeteries are to be relocated. The State shall obtain fee simple title to each site prior to relocating an abandoned cemetery to that site.

(b) The contractor shall:

(1) Prepare each site by clearing undergrowth and constructing fences;

(2) Determine the location of each grave on the property;

(3) Disinter and remove graves at the cemetery to be relocated;
(4) Reinter the graves at the relocation site;
(5) Grade and landscape the relocation site; and
(6) Perform any other function necessary to effectuate the relocation.

"**§ 65-3.6. Supervision by Department; inspection of certain contents of graves.**

(a) The Archaeology and Historic Preservation Section shall supervise the activities of the contractor listed in G.S. 65-3.5. The contractor's work shall be fully satisfactory to the Section.

(b) A representative of the Archaeology and Historic Preservation Section may inspect the remains and:

(1) Study any remains uncovered at disinterment for up to two hours; and

(2) Study those remains believed by the representative to be of historical significance for a period not to exceed five days; provided, however, that no more than ten percent (10%) of the remains at any one abandoned cemetery may be studied during one five-day period.

(c) Upon the invitation of the Archaeology and Historic Preservation Section, college and university archaeology classes may observe the inspections and studies conducted by the Archaeology and Historic Preservation Section and assist with these inspections and studies.

"**§ 65-3.7. Future care of relocated cemeteries.**

(a) The Department of Correction is authorized to furnish prison labor from a unit in a county to provide for the future care of a relocated cemetery in that county. The wages to be paid this prison labor may be appropriated by the General Assembly for this purpose.

(b) The Department of Cultural Resources may enter into contracts with private persons, firms, or corporations for the provision of future care when future care has not been provided for pursuant to subsection (a) of this section."

Section 2. The Department of Cultural Resources shall enter into a negotiated service contract with a contractor pursuant to G.S. 65-3.4 within 60 days after the effective date of this act.

Section 3. There is appropriated from the General Fund to the Department of Cultural Resources, Division of Archives and History, Archaeology and Historic Preservation Section, the sum of two hundred fifty thousand dollars ($250,000) for the 1997-98 fiscal year to fund the program created by this act as follows: an amount not to exceed fifty thousand dollars ($50,000) shall be used for the additional staff, equipment, supplies, and other expenses of the Department necessary to effectuate this program; the remaining two hundred thousand dollars ($200,000) or more shall be used for the purchase of land by the State to be used as relocation sites and for the payment of the contractor as provided in the negotiated service contract.

Section 4. Funds appropriated in this act shall be expended only in accordance with G.S. 121-11 and G.S. 143-31.2.

Section 5. This act becomes effective July 1, 1997.

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July 16, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 592 - Relocate Abandoned Cemeteries.**

Senate Bill 592 creates a new Article in Chapter 65 entitled "Relocation of Abandoned Cemeteries". It authorizes the Archaeology and Historic Preservation Section of the Division of Archives and History, Department of Cultural Resources to administer the relocation of abandoned public cemeteries program.

The Archaeology and Historic Preservation Section is directed to select those abandoned cemeteries that need relocation and to enter a negotiated contract on behalf of the State with a licensed funeral service provider which has been in the cemetery relocation business for the past 10 years. The State shall purchase title to the properties to which the cemeteries will be relocated. The contractor will select the site, prepare it, determine the location of graves, move the graves, grade and landscape the relocation site, and perform any other necessary functions, under the supervision of the Archaeology and Historic Preservation Section.

The Department of Correction is authorized to use prison labor to maintain the relocated cemeteries. Also the Department of Cultural Resources may contract with private entities to provide maintenance when it is not provided by the Department of Corrections. The Department of Cultural Resources shall enter a negotiated contract in accordance with the act within 60 days of the effective date.

Section 3 of the bill appropriates $250,000 for the 1997-98 fiscal year to the Department of Cultural Resources to fund the program. Not more than $50,000 shall be used for additional staff and other expenses of the Department necessary to carry out the program. The remaining $200,000 shall be used to purchase land for relocation sites and for the payment of the contractor. Section 4 provides that the funds appropriated may be expended only if the property is approved in accordance with rules set by the North Carolina Historical Commission.

The act becomes effective July 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

MINUTES
SENATE COMMERCE COMMITTEE
July 23, 1997

A meeting of the Senate Commerce Committee was held at Senator Soles' Desk in the Senate Chamber on Wednesday, July 23, 1997, at 12:20 p.m. Sixteen members of the Committee were present.

Senator Soles, Chairman, called the meeting to order.

The purpose of the meeting was to consider the following bill:

HB 1108 (Senate C. S.), AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR "BREW ON PREMISES" BUSINESSES.

Senator Larry Shaw moved the adoption of Senate Committee Substitute No. 2 for HB 1108. Motion carried. He gave a brief explanation of the change made by the Committee Substitute (See attached explanation.) and the Chairman responded to questions from members of the Committee.

Upon motion of Senator Lee, Senate Committee Substitute No. 2 for HB 1108 was given a favorable report. Senator Kincaid seconded the motion.

The meeting adjourned at 12:25 p.m.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 1108
Committee Substitute Favorable 5/22/97
Committee Substitute #2 Favorable 6/12/97
Senate Finance Committee Substitute Adopted 7/17/97

Short Title: Brew on Premises Permits. (Public)

Sponsors:

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR "BREW ON PREMISES" BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. -- It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic ~~beverage;~~ beverage, except equipment and ingredients provided under a Brew on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic ~~beverage.~~ beverage, except pursuant to a Brew on Premises permit.

(b) Unlawful Manufacturing. -- Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic ~~beverage~~ beverage, except at an establishment with a Brew on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. -- A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

Section 2. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $200.00.
(2) Off-premises malt beverage permit -- $200.00.
(3) On-premises unfortified wine permit -- $200.00.
(4) Off-premises unfortified wine permit -- $200.00.
(5) On-premises fortified wine permit -- $200.00.
(6) Off-premises fortified wine permit -- $200.00.
(7) Brown-bagging permit -- $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit -- $200.00.
(9) Limited special occasion permit -- $25.00.
(10) Mixed beverages permit -- $750.00.
(11) Culinary permit -- $100.00.
(12) Unfortified winery permit -- $150.00.
(13) Fortified winery permit -- $150.00.
(14) Limited winery permit -- $150.00.
(15) Brewery permit -- $150.00.
(16) Distillery permit -- $150.00.
(17) Fuel alcohol permit -- $50.00.
(18) Wine importer permit -- $150.00.
(19) Wine wholesaler permit -- $150.00.
(20) Malt beverage importer permit -- $150.00.
(21) Malt beverage wholesaler permit -- $150.00.
(22) Bottler permit -- $150.00.
(23) Salesman permit -- $25.00.
(24) Vendor representative permit -- $25.00.
(25) Nonresident malt beverage vendor permit -- $50.00.
(26) Nonresident wine vendor permit -- $50.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $25.00.
(28) Winery special event permit -- $100.00.
(29) Mixed beverages catering permit -- $100.00.
(30) Guest room cabinet permit -- $750.00.
(31) Liquor importer/bottler permit -- $250.00.
(32) Brew on premises permit -- $200.00."

Section 3. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(14) Brew on Premises Permit. -- A permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older

may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in 27 C.F.R. § 25.205. The customer must do all of the following:

a. Select a recipe and kettle.

b. Weigh out the proper ingredients and add them to the kettle.

c. Transfer the wort to the fermenter.

d. Add the yeast.

e. Place the ingredients in a fermentation room.

f. Filter, carbonate, and bottle the malt beverage.

A permittee may transfer the ingredients from the fermentation room to the cold room and may assist the customer in all the steps involved in brewing a malt beverage except adding the yeast. A malt beverage produced under this subdivision may not contain more than six percent (6%) alcohol by volume."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1108
Committee Substitute Favorable 5/22/97
Committee Substitute #2 Favorable 6/12/97
Senate Finance Committee Substitute Adopted 7/17/97
Proposed Senate Committee Substitute H1108-PCS1445

Short Title: B.O.P./Sports Club Permits. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR "BREW ON PREMISES" BUSINESSES AND TO CLARIFY THE APPLICABILITY OF CERTAIN REGULATIONS TO SOME SPORTS CLUBS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. -- It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic ~~beverage;~~ beverage, except equipment and ingredients provided under a Brew on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic ~~beverage.~~ beverage, except pursuant to a Brew on Premises permit.

(b) Unlawful Manufacturing. -- Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic ~~beverage~~ beverage, except at

an establishment with a Brew on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. -- A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

Section 2. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $200.00.
(2) Off-premises malt beverage permit -- $200.00.
(3) On-premises unfortified wine permit -- $200.00.
(4) Off-premises unfortified wine permit -- $200.00.
(5) On-premises fortified wine permit -- $200.00.
(6) Off-premises fortified wine permit -- $200.00.
(7) Brown-bagging permit -- $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit -- $200.00.
(9) Limited special occasion permit -- $25.00.
(10) Mixed beverages permit -- $750.00.
(11) Culinary permit -- $100.00.
(12) Unfortified winery permit -- $150.00.
(13) Fortified winery permit -- $150.00.
(14) Limited winery permit -- $150.00.
(15) Brewery permit -- $150.00.
(16) Distillery permit -- $150.00.
(17) Fuel alcohol permit -- $50.00.
(18) Wine importer permit -- $150.00.
(19) Wine wholesaler permit -- $150.00.
(20) Malt beverage importer permit -- $150.00.
(21) Malt beverage wholesaler permit -- $150.00.
(22) Bottler permit -- $150.00.
(23) Salesman permit -- $25.00.
(24) Vendor representative permit -- $25.00.
(25) Nonresident malt beverage vendor permit -- $50.00.
(26) Nonresident wine vendor permit -- $50.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $25.00.
(28) Winery special event permit -- $100.00.
(29) Mixed beverages catering permit -- $100.00.
(30) Guest room cabinet permit -- $750.00.
(31) Liquor importer/bottler permit -- $250.00.
(32) Brew on premises permit -- $200.00."

Section 3. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(14) Brew on Premises Permit. -- A permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in 27 C.F.R. § 25.205. The customer must do all of the following:

a. Select a recipe and kettle.
b. Weigh out the proper ingredients and add them to the kettle.
c. Transfer the wort to the fermenter.
d. Add the yeast.
e. Place the ingredients in a fermentation room.
f. Filter, carbonate, and bottle the malt beverage.

A permittee may transfer the ingredients from the fermentation room to the cold room and may assist the customer in all the steps involved in brewing a malt beverage except adding the yeast. A malt beverage produced under this subdivision may not contain more than six percent (6%) alcohol by volume."

Section 4. G.S. 18B-904 is amended by adding a new subsection to read:

"(g) Regulations issued by the Commission interpreting G.S. 18B-1000(8) shall not apply to any sports club that was issued any permits prior to July 1, 1997, and that is located in any county that borders on: (i) the largest county in the State, (ii) another state, and (iii) a county where 10 or more municipal ABC systems and a county-wide ABC system have been approved."

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

EXPLANATION OF HOUSE BILL 1108:
Brew on Premises Permits (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 6, 1997
SPONSOR: Representative McMahan

House Bill 1108 authorizing the Alcoholic Beverage Commission to issue "Brew on Premises" permits to a business located in a jurisdiction where the sale of malt beverages is allowed. The permit will allow businesses to sell ingredients and rent equipment, time, and space to individual adult customers to brew malt beverages for personal use. Without this change, a person may not possess and rent the equipment needed to manufacture alcoholic beverages. Under current law, a person may only possess the equipment if the person uses the equipment for personal use or is permitted as a manufacturer. The "Brew on Premises" permit fee is $200. The permit must be renewed annually. The renewal fee is 25% of the original application fee or $50. The bill is effective when it becomes law.

The proposed committee substitute removes the exceptions to the statewide applicability of the bill because they are unconstitutional. The North Carolina constitution prohibits local acts that regulate trade. The bill, in its 3rd Edition, is uniformly applicable in all jurisdictions that permit the sale of malt beverages except Columbus and Davie Counties. The exception for these two counties is a local restraint on trade that does not appear to have any rational basis.

Federal law permits adults to produce up to 100 gallons of wine and beer a year for personal use, or up to 200 gallons a year if there are two or more adults in the household, without paying the federal excise tax on alcoholic beverages. (27 C.F.R. § 25.205) North Carolina also permits individuals to produce wine and beer for personal use without obtaining a permit. The bill puts a provision in State law restricting the amount of beer a person may produce for personal use to the same amount allowed under federal law.

Since the business is not permitted to be a manufacturer of beer, the bill seeks to ensure that the customer is the person actually producing the beer by setting forth what the customer must do. The customer must select the recipe, add the yeast, filter and bottle the beer, and add any ingredients used to produce the beer. Although the permittee may offer advise and help, the permittee is specifically prohibited from adding the yeast.

EXPLANATION OF HOUSE BILL 1108 AMENDMENT

The Senate Committee Substitute to House Bill 1108 adds a new section 4 to the bill which amends the ABC law relating to permits issued to sports clubs. The amendment would grandfather the status of any sports club which was issued a permit prior to July 1, 1997 and is located in any county that borders on (1) the largest county in the State, (2) another state, and (3) a county where 10 or more municipal ABC systems and a county-wide ABC system have been approved (i.e., Columbus County). Sports clubs under this provision would not be subject to administrative rules adopted by the ABC Commission relating to sports clubs.

Currently, a sports club is defined by statute as "an establishment substantially engaged in the business of providing an 18-hole golf course, two or more tennis courts, or both." It can either be open to the public or to members and their guests; and its gross receipts for club activities must be greater than its gross receipts for alcoholic beverages. A sports club may operate a restaurant and receipts for food shall be included in with the club activity fee.

The ABC Commission has adopted rules interpreting the statute and defining terms. The rules also describe what types of revenues may be included in club activity fees, and require that a sports club derive at least 15% of its club activity fees from sources other than receipts for food.

As a result of the amendment to House Bill 1108, these rules would apply to all sports clubs issued permits after July 1, 1997 and to all sports clubs located outside of Columbus County which were issued permits prior to July 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
R. C. Soles, Jr., Chairman

Thursday, July 24, 1997

R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1)	**1108**	Brew on Premises Permits.	
		Draft Number:	PCS 1445
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

MINUTES
SENATE COMMERCE COMMITTEE
August 6, 1997

The Senate Commerce Committee met in Room 1027 of the State Legislative Building on Wednesday, August 6, 1997, at 9:00 a.m. Fifteen members of the Committee were present. Visitor Registration Sheets are attached listing others attending the meeting.

Senator R. C. Soles, Jr., called the meeting to order. He welcomed Senator Purcell who was attending his first meeting of the Committee. Senator Purcell was appointed to replace Senator Conder who resigned from the Senate to accept an appointment on the Utilities Commission.

The purpose of the meeting was to receive a report of the Subcommittee chaired by Senator Howard Lee on House Bill 1075, AN ACT TO PERMIT LENDERS TO CONTRACT FOR AND RECEIVE SHARED APPRECIATION IN CERTAIN CIRCUMSTANCES. Senator Lee said the Subcommittee composed of Senators Dalton, Kerr and Ledbetter had spent an enormous amount of time reviewing the legislation He said the bill allows lenders to contract for and receive shared appreciation or shared value under certain circumstances. (See copy of Memorandum from Committee Co-Counsel for full explanation.) Senator Lee said the AARP strongly supports the bill.

Rep. Hall, the bill sponsor, spoke briefly on the bill and thanked the Subcommittee for its work in preparing the Committee Substitute. Senator Rand moved the adoption of the Proposed Committee Substitute for House Bill 1075. Motion carried.

The following people assisted in answering questions raised by members of the Committee: Ms. Teresa Tilley, Coordinator for the Reverse Mortgage Program for Centura Bank, Mr. Mike Hyman with Wendover Funding of Greensboro and Ms. Mary Reca Todd with the North Carolina Housing Finance Agency.

Senator Dalton sent forward an amendment and moved its adoption. Motion carried. He said the amendment simply allows persons, firms or corporations authorized by the Banking Commission to make loans under the program. He referred specifically to TransAmerica.

Senator Lee moved that the Proposed Committee Substitute for HB 1075, as amended, be given a favorable report and that it be rolled into a new Committee Substitute. Motion carried.

R. C. Soles Jr. — Joan R. Leatherman

Senator R. C. Soles, Jr., Chairman — Joan R. Leatherman, Committee Clerk

MINUTES
SENATE COMMERCE COMMITTEE
August 6, 1997
ADDENDUM

Senator Soles announced on the floor of the Senate on August 27, 1997, that since the Committee would not be meeting again during the 1997 Session, he was announcing the appointment of a Subcommittee on House Bill 940, Worker's Compensation/Realtor Status, so that the bill can be reviewed and taken up during the 1998 Session. The Subcommittee consists of the following members:

Senator Ballance, Chairman
Senator Hartsell
Senator Kerr.

Senator R. C. Soles, Jr., Chairman

Joan R. Leatherman, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
SEN. R. C. SOLES, JR., Chairman

Thursday, August 07, 1997

SEN. R. C. SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **1075** Appreciation of Reverse Mortgages

Draft Number:	PCS 1449
Sequential Referral:	NONE
Recommended Referral:	NONE
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1075

Short Title: Appreciation of Reverse Mortgages. (Public)

Sponsors: Representatives Hall; Baker, Bonner, Boyd-McIntyre, Culp, Cunningham, Davis, Eddins, Fox, Grady, Hiatt, Hill, Justus, Kinney, Kiser, Mitchell, Morris, Mosley, Owens, Rayfield, Sherrill, Smith, Starnes, Tolson, Weatherly, Wilkins, C. Wilson, and Womble.

Referred to: Commerce, if favorable, Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT LENDERS TO CONTRACT FOR AND RECEIVE SHARED APPRECIATION IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-270 reads as rewritten:

"**§ 53-270. Prohibited acts.**

Reverse mortgage lenders are prohibited from engaging in any of the following acts in connection with the making, servicing, or collecting of a reverse mortgage loan:

(1) Misrepresenting material facts, making false promises, or engaging in a course of misrepresentation through agents or otherwise.

(2) Failing to disburse funds in accordance with the terms of the reverse mortgage loan contract or other written commitment.

(3) Improperly refusing to issue a satisfaction of a mortgage.

(4) Engaging in any action or practice that is unfair or deceptive, or that operates a fraud on any person.

(5) Contracting for or receiving shared ~~appreciation.~~ appreciation or shared equity, other than in an amount:

a. Not to exceed ten percent (10%) of the value of the property at the time of the loan repayment; and

b. Permitted in conjunction with a loan that:

1. Is outstanding for 24 months or longer; and

2. Either (i) is guaranteed or insured by an agency of the federal government, or (ii) has originated under a reverse mortgage program approved by the Federal National Mortgage Corporation, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

(6) Closing a reverse mortgage loan without receiving certification from a ~~counselor~~ person who is certified as a reverse mortgage counselor by the State that the borrower has received counseling on the advisability of a reverse mortgage loan and the appropriate reverse mortgage loan for the borrower.

(7) Failing to comply with this Article."

Section 2. This act becomes effective October 1, 1997, and applies to contracts for loans entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1075
Proposed Senate Committee Substitute
H1075-CSRO-004
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Appreciation of Reverse Mortgages. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT LENDERS TO CONTRACT FOR AND RECEIVE SHARED APPRECIATION OR SHARED VALUE IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-270 reads as rewritten:

"**§ 53-270. Prohibited acts.**

Reverse mortgage lenders are prohibited from engaging in any of the following acts in connection with the making, servicing, or collecting of a reverse mortgage loan:

(1) Misrepresenting material facts, making false promises, or engaging in a course of misrepresentation through agents or otherwise.

(2) Failing to disburse funds in accordance with the terms of the reverse mortgage loan contract or other written commitment.

(3) Improperly refusing to issue a satisfaction of a mortgage.

(4) Engaging in any action or practice that is unfair or deceptive, or that operates a fraud on any person.

(5) Contracting for or receiving shared ~~appreciation.~~ appreciation or shared value, except as provided in G.S. 53-270.1.

(6) Closing a reverse mortgage loan without receiving certification from a ~~counselor~~ person who is certified as a reverse mortgage counselor by the State that the borrower has received counseling on the advisability of a reverse mortgage loan and the ~~appropriate~~ various types of reverse mortgage ~~loan for the borrower.~~ loans and the availability of other financial options and resources for the borrower, as well as potential tax consequences.

(7) Failing to comply with this Article."

Section 2. Article 21 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-270.1. Contracts for shared appreciation or shared value.

(a) A lender and a borrower may agree, in writing, that in addition to the principal and any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may receive:

(1) Shared appreciation if it is in an amount not exceeding ten percent (10%) of the increase in the value of the property from the date of origination of the reverse mortgage loan to the date of loan repayment; or

(2) Shared value if it is in an amount not exceeding ten percent (10%) of the value of the property at the time of repayment of the reverse mortgage loan; and

(3) The shared appreciation or shared value is paid in conjunction with a loan that:

a. Is outstanding for 24 months or longer; and

b. Either (i) is guaranteed or insured by an agency of the federal government, or (ii) has been originated under a reverse mortgage program approved by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, provided the loan is sold to one of those agencies or enterprises within ninety days of loan closing; and

(4) The borrower receives additional economic benefit in exchange for paying the shared appreciation or

shared value, including, but not limited to, larger monthly payments or a larger line of credit.

(b) In determining the value of the property at the time of origination of the reverse mortgage loan and at the time of repayment, if repayment is not in conjunction with the sale of the property, under subsection (a)(1) and (2) of this section, the lendor and the borrower shall have the right to obtain an appraisal from an appraiser licensed or certified in accordance with G.S. 93E-1-6. If the appraisals differ, and the parties cannot agree on a value, an average of the appraisals shall determine the value. If the borrower does not desire an appraisal, the lendor may obtain an appraisal, which shall be controlling. Notwithstanding the foregoing, the parties may agree in writing to waive these requirements and agree upon the value of the property.

(c) If repayment is made in conjunction with the sale of the property, the actual and reasonable costs of sale shall be deducted from the value of the property prior to the calculation of the amount of shared appreciation or shared value."

Section 3. G.S. 53-257(7) reads as rewritten:

"(7) Shared appreciation. -- An agreement by the lender and the borrower that, in addition to the principal and any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may collect an additional amount equal to a percentage of ~~any net appreciated value of the property during the term of the reverse mortgage loan.~~ the increase in the value of the property from the date of origination of the loan to the date of loan repayment.

(7a) Shared value. -- An agreement by the lender and the borrower that, in addition to the principal and any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may collect an additional amount equal to a percentage of the value of the property at the time of loan repayment."

Section 4. This act becomes effective October 1, 1997, and applies to contracts for loans entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1075
Proposed Senate Committee Substitute H1075-PCS1449

Short Title: Appreciation of Reverse Mortgages. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT LENDERS TO CONTRACT FOR AND RECEIVE SHARED APPRECIATION OR SHARED VALUE IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-270 reads as rewritten:

"**§ 53-270. Prohibited acts.**

Reverse mortgage lenders are prohibited from engaging in any of the following acts in connection with the making, servicing, or collecting of a reverse mortgage loan:

(1) Misrepresenting material facts, making false promises, or engaging in a course of misrepresentation through agents or otherwise.

(2) Failing to disburse funds in accordance with the terms of the reverse mortgage loan contract or other written commitment.

(3) Improperly refusing to issue a satisfaction of a mortgage.

(4) Engaging in any action or practice that is unfair or deceptive, or that operates a fraud on any person.

(5) Contracting for or receiving shared ~~appreciation.~~ appreciation or shared value, except as provided in G.S. 53-270.1.

(6) Closing a reverse mortgage loan without receiving certification from a ~~counselor~~ person who is certified as a reverse mortgage counselor by the State that the borrower has received counseling on the advisability of a reverse mortgage loan and the ~~appropriate~~ various types of reverse mortgage ~~loan for the borrower.~~ loans and

the availability of other financial options and resources for the borrower, as well as potential tax consequences.

(7) Failing to comply with this Article."

Section 2. Article 21 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-270.1. Contracts for shared appreciation or shared value.**

(a) A lender and a borrower may agree, in writing, that in addition to the principal and any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may receive:

(1) Shared appreciation if it is in an amount not exceeding ten percent (10%) of the increase in the value of the property from the date of origination of the reverse mortgage loan to the date of loan repayment; or

(2) Shared value if it is in an amount not exceeding ten percent (10%) of the value of the property at the time of repayment of the reverse mortgage loan; and

(3) The shared appreciation or shared value is paid in conjunction with a loan that:

a. Is outstanding for 24 months or longer; and

b. Either (i) is guaranteed or insured by an agency of the federal government, or (ii) has been originated under a reverse mortgage program approved by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, provided the loan is sold to one of those agencies or enterprises within 90 days of loan closing, or (iii) has been originated under a reverse mortgage program of a person, firm, or corporation approved as an authorized lender by the Commissioner; and

(4) The borrower receives additional economic benefit in exchange for paying the shared appreciation or shared value, including, but not limited to, larger monthly payments or a larger line of credit.

(b) In determining the value of the property at the time of origination of the reverse mortgage loan and at the time of repayment, if repayment is not in conjunction with the sale of the property, under subdivisions (a)(1) and (2) of this section, the lender and the borrower shall have the right to obtain an appraisal from an appraiser licensed or certified in accordance with G.S. 93E-1-6. If the appraisals differ, and the parties cannot agree on a value, an average of the appraisals shall determine the value. If the borrower does not desire an appraisal, the lender may obtain an appraisal, which shall be controlling. Notwithstanding the foregoing, the parties may agree in writing to waive these requirements and agree upon the value of the property.

(c) If repayment is made in conjunction with the sale of the property, the actual and reasonable costs of sale shall be deducted from the value of the property prior to the calculation of the amount of shared appreciation or shared value."

Section 3. G.S. 53-257(7) reads as rewritten:

"(7) Shared appreciation. -- An agreement by the lender and the borrower that, in addition to the principal and any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may collect an additional amount equal to a percentage of ~~any net appreciated value of the property during the term of the reverse mortgage loan.~~ the increase in the value of the property from the date of origination of the loan to the date of loan repayment.

(7a) Shared value. -- An agreement by the lender and the borrower that, in addition to the principal and any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may collect an additional amount equal to a percentage of the value of the property at the time of loan repayment."

Section 4. This act becomes effective October 1, 1997, and applies to contracts for loans entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

PROPOSED AMENDMENT

H. B. No. 1075 (Senate Proposed Committee Substitute)

S. B. No. _____

(Rep.) Walter Dalton

(Sen.)

moves to amend the bill on page 2, line 41

( ) which changes the title

by adding the following after the word "closing" and before the semicolon:

"or (iii) has been originated under a reverse mortgage program of a person, firm or corporation approved as an authorized lender by the Commissioner"

Committee Action _____ Date _____

Walter Dalton

North Carolina General Assembly
Legislative Services Office

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August 5, 1997

MEMORANDUM

TO: Senator R.C. Soles, Chairman, Senate Commerce Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 1075 - Appreciation of Reverse Mortgages.**
(Proposed Committee Substitute H1075-CSRO-004)

House Bill 1075 amends the Reverse Mortgage Act to allow lenders to contract for and receive shared appreciation or shared value under certain circumstances. The Reverse Mortgage Act, (Article 21 of Chapter 53) was enacted by the General Assembly in 1991 to allow senior homeowners (62 years of age or older) to access the equity in their homes without having to sell their homes or take out home equity loans. A reverse mortgage provides payments to the homeowner either in a lump sum or over a period of years, and the debt is generally paid off when the homeowner dies, moves or sells the home.

Under current law, contracting for or receiving shared appreciation is included as a prohibited act by a reverse mortgage lender. This bill would allow the lender to contract for or receive shared appreciation - which is defined as the increase in the value of the property from the date of loan origination to the date of loan repayment, or shared value - which is defined as a percentage of the value of the property at the time of loan repayment, if:

1. the amount of shared appreciation or shared value does not exceed 10%;
2. the loan is outstanding 24 months or longer, and the loan is guaranteed or insured by the federal government or originated under a program approved by specified federal mortgage entities; and
3. the borrower receives additional economic benefit in exchange for paying the shared appreciation or shared value.

The bill also contains provisions which establish a procedure for obtaining appraisals of property if repayment is not in conjunction with the sale of the property, and requiring that the costs of sale be deducted from the value of the property prior to calculation of shared appreciation or shared value, when repayment is made in conjunction with the sale of the property.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

In addition, a new section 3 has been added to the bill, which amends the definition of "shared appreciation" which is already in the law, to conform with the provisions of this bill and to define the term "shared value", consistently with the provisions of this bill.

Finally, the bill requires that mandated counseling be provided by a state certified reverse mortgage counselor and that the counselor give information to borrowers about potential tax consequences of a reverse mortgage loan.

The act becomes effective October 1, 1997, and applies to contracts for loans entered into on or after that date.

VISITOR REGISTRATION SHEET

COMMERCE — 8-6-97

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Polly Williams	NC Equity / NC Coalition on Aging
Mary Beal Todd	NC Housing Finance Agency
Paul Stock	NC BANKERS ASSN
Gordon Allen	" " "
Mike Hyman	Wendover Funding, Greensboro
Reuben Harris	Centura Bank - Rocky Mount
Teresa Tilley	Centura Bank Hickory
Christine Urso	Resources for Seniors, Counselor, Raleigh
Travis Porter	Porter & Steel
Sandra Long	Porter & Steel
Jim Lore	Lore & McClearen
Charles Cramer	NCATL
Dick Taylor	NCATL
Rob Schofield	NCJCDC
John Mary	NC CWA council
Tim Minnis	NC Assoc of Realtors
Jimmy Green	SEANC, INC
Don McLeod	NCRMA
Frank Preston	"
Wm. Brian Hicks	Gov. Office Intern
Joe McElrees	McElrees Consult

VISITOR REGISTRATION SHEET

COMMERCE 8-6-97

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Michael L Thompson	NC Power
Doug Lassiter	NC Septic Tank Assoc

1997

SENATE FINANCE COMMITTEE

MINUTES

SENATE FINANCE COMMITTEE

THURSDAY, MAY 22, 1997

8:30 A.M. - ROOM 643 LOB

The Senate Finance Committee met. There were 22 members of the committee present. Senator David W. Hoyle, Co-Chairman, presided. Senator Hoyle called the meeting to order and introduced the Pages, they are Joseph Patton from Nags Head, N. C., sponsored by Senator Basnight, Jamie Bonnett from Kitty Hawk, N. C., sponsored by Senator Basnight and Ben Eisner from Kill Devil Hills, N. C., sponsored by Senator Basnight.

H. B. 643 - Belmont Annexation Agreement

Representative Rayfield came to explain the bill. Senator Weinstein made a motion for a "favorable" report, motion passed.

H. B. 136 - Late Video Return/Sales Tax

Representative Weatherly came to explain the bill. Mr. George Long with the Sales Tax Division with the Department of Revenue spoke on the bill. After many questions and comments on the bill from members of the committee, Senator Hoyle stated that there would not be a vote taken on this bill today.

H. B. 529 - No Tax Rollback on Condemnation

Senator Dalton explained this bill for Representative Clary. Senator Wellons moved for a "favorable" report, motion passed.

S. B. 784 - Conform Tax Extension Rules

Senator Webster made a motion for adoption of proposed committee substitute, motion passed. Senator Webster explained the committee substitute. Mr. Billy Daniel of the Corporate Tax Division of the Department of Revenue spoke on the bill. After discussion and questions from members of the Committee, Senator McDaniel made a motion to give the bill a "favorable" report, motion passed.

S. B. 41 - No Sales Tax on Prescription Drugs

Senator Webster explained the bill and stated that this was the last place in the drug tax law to be closed. After discussion on the bill, Senator Hoyle stated that we would not take a vote on this bill today.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report is Attachment # 3

Attachment #1

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, MAY 22, 1997

ROOM 643 AT 8:30 AM

SB 41 - NO SALES TAX ON PRESCRIPTION DRUGS - SEN. WEBSTER

SB 784 - CONFORM TAX EXTENSION RULES - SEN. WEBSTER

HB 136 - LATE VIDEO RETURN/SALES TAX - REP. WEATHERLY

HB 529 - NO TAX ROLLBACK ON CONDEMNATION - REP. CLARY

HB 643 -BELMONT ANNEXATION AGREEMENT - REP. RAYFIELD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 643

Short Title: Belmont Annexation Agreement. (Local)

Sponsors: Representatives Rayfield; Clary, Dedmon, Dickson, Gamble, Kiser, and Weatherly.

Referred to: Local and Regional Government II, if favorable, Finance.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF BELMONT TO ENTER INTO AN AGREEMENT FOR PAYMENTS IN LIEU OF ANNEXATION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any applicable provision of the General Statutes or any other public or local law, the City of Belmont is granted certain contract powers as follows:

(1) The City of Belmont may, by agreement, provide that certain property described in the agreement as the "Allen Plant Property" may not be involuntarily annexed by the City prior to December 30, 2009, under the General Statutes as they now exist or may be subsequently amended. The City of Belmont shall not seek to repeal this act upon its approval by the General Assembly. Nothing in this act impairs the right of the General Assembly to annex any such property by special local act.

(2) Any agreement entered into as provided in subdivision (1) of this section is deemed by this section to be proprietary and commercial in nature and is specifically determined to be consistent with the public policy of the State of North Carolina.

(3) Any agreement entered into as provided in subdivision (1) of this section is a continuing agreement and is binding on and enforceable against the current and future members of the City

Council of the City of Belmont during the full term of such agreement and any extension thereof.

(4) The parties to any agreement entered into as provided in subdivision (1) of this section are authorized by this section to modify, amend, and extend such agreement on mutual written consent, without the approval of the General Assembly, provided that any such modification or amendment does not materially alter the concept of the agreement.

Section 2. The City of Belmont may accept, as consideration for such agreement, "Payments in lieu of taxes".

Section 3. Payments in lieu of taxes under this act shall be annually computed based upon the tax assessment of the Allen Plant Property as determined by the North Carolina Department of Revenue, Ad Valorem Tax Division, pursuant to Article 23 of Chapter 105 of the General Statutes, with the formula for making the computation being stated in the agreement referenced under Section 1 of this act.

Section 4. The agreement under Section 1 of this act shall apply to the Allen Plant Property described as follows:

Beginning at a point in the center line of Southpoint Road and running from said beginning point N 87-07 E-528.3 ft. to a concrete monument in the southeasterly corner of the property now or formerly of Louise B. Wilson; thence N 01-36 E-750.2 ft. to an iron pipe; thence N 0-46 E-349.4 ft. to an iron pin; thence N 0-27 E-259.8 ft. to a concrete monument; thence S 86-49 E-407.7 ft. to an iron pin; thence S 86-36 E-338.1 ft. to an iron pipe; thence S 86-59 E-230.2 ft. to an iron pin; thence S 87-06 E-374.6 ft. to a concrete monument; thence N 0-39 E-692.3 ft. to an iron pin; thence N 0-52 E-256.2 ft. to an iron pin; thence N 0-17 E-305.8 ft. to an iron pin; thence N 0-25 E-59.4 ft. to an iron pipe; thence S 85-45 E-1584.0 ft. to an iron pipe in the boundary of Duke Power Company's Lake Wylie Hydroelectric Project; thence with the boundary of Lake Wylie Hydroelectric Project approximately 11,822 ft. to an iron pin in the northeasterly corner of the property now or formerly Crescent Resources, Inc.; thence with the northerly line of said property N 89-29 W-2255.3 ft. to an iron pin; thence N 42-56 W-661.1 ft. to a concrete monument; thence S 69-18 W-1019.0 ft. to a concrete monument the southeasterly corner of the property of Vernie Holton (now or formerly); thence with the easterly line of the Vernie Holton property N 5-55 E-929.5 ft. to an iron pipe; thence S 80-42 W-448.3 ft. to a concrete monument; thence N 4-19 W-130.2 ft. to a concrete monument; thence S 85-28 W-10.0 ft. to an iron pin; thence N 2-00 W-169.9 ft. to a iron pin; thence S 85-44 W-252.8 ft. to a point in the center line of Southpoint Road; thence with the center line of Southpoint Road N 2-01 W-168.9 ft. to a point; thence N 82-51 E-248.8 ft. to an iron pin; thence N 7-09 W-124.2 ft to a point; thence S 82-58 W-27.5 ft. to a concrete monument; thence N 10-42 E-206.3 ft. to an iron pin; thence N 81-12 E-149.2 ft. to a concrete monument; thence N 14-03 E-503.5 ft. to a concrete monument; thence N 14-58 W-226.8 ft. to an iron pin; thence N 18-27 E-178.9 ft. to a point in the center line of County Road No. 2703; thence with the center line of said road N 82-39 E-594.1 ft. to a point; thence S 5-29 W-255.7 ft. to an iron pin; thence N 83-25 E-126.8 ft. to an iron pin; thence N 5-29 E-

255.7 ft. to a point in the center line of County Road No. 2703; thence with center line of said road N 82-39 E-216.4 ft. to an iron pin; thence N 5-52 E-230.0 ft. to an iron pin; thence S 82-52 W-101.9 ft. to an iron pin; thence N 5-29 E-448.6 ft. to a concrete monument; thence N 5-52 E-518.3 ft. to a concrete monument; thence N 78-16 W-208.1 ft. to a concrete monument; thence N 15-58 E-100.0 ft. to a concrete monument; thence N 73-08 W-197.5 ft. to a concrete monument; thence S 17-34 W-75.0 ft. to an iron pin; thence N 63-05 W-49.5 ft. to a concrete monument; thence S 82-47 W-158.9 ft. to a concrete monument; thence S 2-03 E-25.0 ft. to an iron pipe; thence S 82-49 W-300.0 ft. to an iron pipe; thence N 2-03 W-25.0 ft. to a concrete monument; thence S 82-49 W-196.9 ft. to a concrete monument; thence N 1-51 W-150.5 ft. to an I beam; thence N 82-58 E-196.4 ft. to an iron pipe; thence N 2-03 W-50.3 ft. to an iron pin; thence S 82-53 W-196.7 ft. to an iron rod; thence N 2-19 W-143.1 ft. to a concrete monument; thence N 37-03 W-179.4 ft. to a concrete monument; thence N 56-22 E-150.2 ft. to an iron pipe; thence N 1-39 E-931.1 ft. to a concrete monument; thence N 60-57 W-316.8 ft. to a concrete monument; thence S 30-03 W-205.4 ft. to an iron pin; thence S 20-28 W-75.9 ft. to a nail and cap in Southpoint Road; thence N 66-10 W-5.8 ft. to a point in the center line of Southpoint Road; thence with the center line of said road N 12-52 E-264.1 ft. to a railroad spike in the center line of said road; thence N 77-08 W-506.1 ft. to an iron pin; thence S 12-51 W-365.9 ft. to a concrete monument; thence N 66-10 W-164.1 ft. to a concrete monument; thence S 15-24 W-301.8 ft. to a concrete monument; thence N 89-41 W-925.1 ft. to a concrete monument; thence S 20-44 W-99.8 ft. to a concrete monument; thence N 62-37 W-490.8 ft. to an angle iron; thence S 24-54 W-767.6 ft. to an angle iron; thence N 47-37 W-158.0 ft. to an iron pipe; thence N 55-37 W-373.3 ft. to an iron pipe in Duke Power Company's Allen Fishing Access Area; thence with the southeasterly line of the Duke Power Company Allen Fishing Access Area, approximately 1,051 to an iron pin; thence N 2-00 W-1612.7 ft. to a concrete monument; thence N 63-51 E-576.1 ft. to a point; thence with the arc of a circular curve to the right having a radius of 950.21 ft. an arc distance of 281.02 ft. to a point; thence N 80-50-30 E 81.95 ft. to a point; thence with the arc of a circular curve to the right, having a radius of 364.64 ft. an arc distance of 211.77 ft. to a point; thence S 65-53-00 E 195.05 ft. to a point; thence with the arc of a circular curve to the left having a radius of 195.28 ft., an arc distance of 162.51 ft.; thence N 66-26-14 E 205.06 ft. to a point; thence with the arc of a circular curve to the right having a radius of 307.75 ft. an arc distance of 108.96 ft. to a concrete monument, thence N 86-43 E-278.8 ft. to a concrete monument; thence N 86-39 E-316.3 ft. to the point of beginning, containing 1003.0 acres more or less.

SCHEDULE 1

(1) Certified Value: The parties agree that the tax equivalent payments made by Duke Power to Belmont with respect to its Allen Plant Property shall be based on the annual value of the Allen Plant Property as certified to the Gaston County Tax Department by the North Carolina Department of Revenue, Ad Valorem Tax Division, which value is hereinafter referred to as "Certified Value." The Certified Value for the then current year shall be used in computing the annual tax

equivalent payments to be made by Duke Power to Belmont each year during the term of this Agreement.

(2) Tax Equivalent Payments: The tax equivalent payments shall be made annually for 12 consecutive calendar years. Each annual payment shall be made on or before the thirtieth day of June of each year beginning with the year 1998.

Each year, the dollar amount of the tax equivalent payments shall be determined as follows: (a) - Determination of amount of tax equivalency - Multiply the Certified Value of the Allen Plant Property for the then current year by the tax rate of Belmont which is in effect on January 1 of the then current year; and (b) - Determination of amount of payment in lieu - Multiply the determination of the amount of tax equivalency in (a) above, stated in dollars, by the percentage set out in the following table:

Current Year	Percent
1996	0
1997	0
1998	8.5
1999	17.0
2000	25.5
2001	34.0
2002	42.5
2003	51.0
2004	59.5
2005	68.0
2006	76.5
2007	85.0
2008	92.5
2009	100.00

Subject to any other adjustments required by the Agreement, the product, stated in dollars, shall be the dollar amount of the payment in lieu of taxes which shall be paid by Duke Power to Belmont for the then current year.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 529
Committee Substitute Favorable 5/6/97
Third Edition Engrossed 5/8/97

Short Title: No Tax Rollback on Condemnation. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT DEFERRED TAXES DUE ON PROPERTY THAT IS TAXED AT ITS PRESENT-USE VALUE WILL BE PAID BY THE PERSON TO WHOM THE LAND IS TRANSFERRED IF THE PROPERTY IS TRANSFERRED BECAUSE OF CONDEMNATION OR IMPENDING CONDEMNATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-6 reads as rewritten:

"**§ 40A-6. Reimbursement of owner for taxes paid on condemned property.**

An owner whose property is totally taken in fee simple by a condemnor exercising the power of eminent domain, under this Chapter or any other ~~statute~~ statute, shall be entitled to reimbursement from the condemnor of the following:

(1) The pro rata portion of real property taxes paid by the owner ~~which~~ that are allocable to a period subsequent to vesting of title in the condemnor, or the effective date of possession of ~~such~~ the real property, whichever is earlier.

(2) All deferred taxes paid by the owner pursuant to G.S. 105-277.4(c) as a result of the condemnation."

Section 2. G.S. 136-121.1 reads as rewritten:

"**§ 136-121.1. Reimbursement of owner for taxes paid on condemned property.**

A property owner whose property is totally taken in fee simple by any condemning agency (as defined in G.S. 133-7(1)) exercising the power of eminent domain, under

this Chapter or any other statute or charter provision, shall be entitled to reimbursement from the condemning agency of the following:

(1) The pro rata portion of real property taxes paid ~~which~~ that are allocable to a period subsequent to vesting of title in the agency, or the effective date of possession of ~~such~~ the real property, whichever is earlier.

(2) All deferred taxes paid by the owner pursuant to G.S. 105-277.4(c) as a result of the condemnation."

Section 3. G.S. 105-277.4 reads as rewritten:

"**§ 105-277.4. Agricultural, horticultural and forestland -- ~~Application for taxation at present-use value.~~ Application; appraisal at use value; appeal; deferred taxes.**

(a) Application. -- Property coming within one of the classes defined in G.S. 105-277.3 shall be eligible for taxation on the basis of the value of the property in its present use if a timely and proper application is filed with the assessor of the county in which the property is located. The application shall clearly show that the property comes within one of the classes and shall also contain any other relevant information required by the assessor to properly appraise the property at its present-use value. An initial application shall be filed during the regular listing period of the year for which the benefit of this classification is first claimed, or within 30 days of the date shown on a notice of a change in valuation made pursuant to G.S. 105-286 or G.S. 105-287. A new application is not required to be submitted unless the property is transferred or becomes ineligible for use-value appraisal because of a change in use or acreage.

(b) Appraisal at Present-use Value. -- Upon receipt of a properly executed application, the assessor shall appraise the property at its present-use value as established in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its present-use value, the assessor shall appraise the improvements located on qualifying land according to the schedules and standards used in appraising other similar improvements in the county. If all or any part of a qualifying tract of land is located within the limits of an incorporated city or town, the assessor shall furnish a copy of the property record showing both the present-use appraisal and the valuation upon which the property would have been taxed in the absence of this classification to the collector of the city or town. He shall also notify the tax collector of any changes in the appraisals or in the eligibility of the property for the benefit of this classification.

(b1) Appeal. -- Decisions of the assessor regarding the qualification or appraisal of property under this section may be appealed to the county board of equalization and review or, if that board is not in session, to the board of county commissioners. Decisions of the county board may be appealed to the Property Tax Commission.

(c) Deferred Taxes. -- Property meeting the conditions for classification under G.S. 105-277.3 shall be taxed on the basis of the value of the property for its present use. The difference between the taxes due on the present-use basis and the taxes which would have been payable in the absence of this classification, together with any interest, ~~penalties~~ penalties, or costs that may accrue thereon, shall be a lien on the

real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the taxing unit or units as deferred taxes, but shall not be payable, unless and until the property loses its eligibility for the benefit of this classification. The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years which have been deferred ~~as provided herein,~~ shall immediately be payable, together with interest thereon as provided in G.S. 105-360 for unpaid taxes which shall accrue on the deferred taxes due ~~herein~~ as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land loses its eligibility, a determination shall be made of the amount of deferred taxes applicable to that part and that amount shall become payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection shall be extinguished.

(d) Exceptions. -- Notwithstanding the provisions of subsection ~~(e), if a farm unit loses~~ (c) of this section, if property loses its eligibility for present use value ~~treatment~~ classification solely due to ~~a~~ one of the following reasons, no deferred taxes are due and the lien for the deferred taxes is extinguished:

(1) There is a change in income caused by enrollment of ~~land in the federal Conservation Reserve Program authorized by Title XII of the Food Security Act of 1985 (Pub. L. 99-198), as amended, no deferred taxes shall be owed and all present use value tax liens shall be extinguished.~~ the property in the federal conservation reserve program established under 16 U.S.C. Chapter 58.

~~(e) Notwithstanding the provisions of subsection (e) of this section, if real property qualified for present use appraisal~~

(2) The property is conveyed by gift to a nonprofit organization and qualifies for exclusion from the tax base pursuant to G.S. 105-275(12) or ~~G.S. 105-275(29) or~~ G.S. 105-275(29).

(3) The property is conveyed by gift to the State, a political subdivision of the State, or the United ~~States, no deferred taxes shall be owed, and all present use value tax liens are extinguished.~~ States."

Section 4. This act is effective when it becomes law and applies to transfers made on or after June 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 529
SHORT TITLE: No Tax Rollback on Condemnation
SPONSOR(S): Committee Substitute (Third Edition)

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	See section on assumptions and methodology.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local units of government that levy a property tax.

EFFECTIVE DATE: Transfers of property made on or after June 1, 1997.

BILL SUMMARY: Property meeting one of the three classes defined in G.S. 105-277.3 is eligible for taxation on the basis of the value of the property in its present-use instead of its market value. The difference in the taxes due on the present-use and the taxes which would have been payable in the absence of the "present-use classifications" are carried forward as deferred taxes. If the classification of the property changes due to ownership, the deferred taxes are due. The amount payable is equal to the amount deferred for the three previous years plus the current year's property tax based on the market value.

Under this act, the amount of deferred tax is to be paid by the party condemning the property.

ASSUMPTIONS AND METHODOLOGY:
In order to gauge an impact, the Department of Transportation provided a partial list of the property condemned in 1996 for right-of-way acquisitions. The counties listed by the DOT were Catawba, Chatham, Cherokee, Edgecombe, Guilford, Madison, Mecklenburg, Pender, Randolph, Wake, and Watauga. A questionnaire was sent to each of the counties listed by the Department, asking if any of the property listed was taxed at use value. Eight of the counties responded, five of which reported an amount in deferred taxes paid in tax year 1996. These five counties reported collecting $287,852 in deferred taxes on condemned property for the tax year.

The Department of Transportation is not the only State agency that has power of immanent domain. Local units of government too have such authority as well as public utility companies.

FISCAL RESEARCH DIVISION
PREPARED BY: Warren Plonk
APPROVED BY:
DATE: May 21, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 784

Short Title: Conform Tax Extension Rules. (Public)

Sponsors: Senators Webster, Hartsell, Kerr; Allran, Ballantine, Blust, Carpenter, Clark, Cochrane, East, Forrester, Garwood, Horton, Hoyle, Kincaid, Ledbetter, McDaniel, Page, Reeves, and Shaw of Guilford.

Referred to: Finance.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TAX RELIEF AND SIMPLIFICATION BY CONFORMING STATE TAX LAW TO THE FEDERAL RULE THAT GRANTS A FILING EXTENSION EVEN IF THE REQUEST IS NOT ACCOMPANIED BY PAYMENT.

The General Assembly of North Carolina enacts:

Section 1. G. S. 105-263 reads as rewritten:

"**§ 105-263. Extensions of time for filing a report or return.**

The Secretary may extend the time in which a person must file a report or return with the Secretary. To obtain an extension of time for filing a report or return, a person must comply with any application requirement set by the Secretary. ~~In addition, if the extension is for~~ An extension of time for filing a franchise tax return, an income tax return, or a gift tax ~~return, the person must pay the amount of tax expected to be due with the return by the original due date of the return; an extension of time for filing one of these returns~~ return does not extend the time for paying the tax due or the time when a penalty attaches for failure to pay the tax. An extension of time for filing

~~If the extension is for~~ a report or any return other than a franchise tax return, an income tax return, or a gift tax ~~return, the person is not required to pay the amount of tax expected to be due with the report or return by the original due date of the report or return; an extension of time for filing a report or one of these other returns~~ return extends the time for paying the tax due and the time when a penalty attaches

for failure to pay the tax. When an extension of time for filing a report or return extends the time for paying the tax expected to be due with the report or return, interest, at the rate established pursuant to G.S. 105-241.1(i), accrues on the tax due from the original due date of the report or return to the date the tax is paid."

Section 2. The Secretary of Revenue shall draw from collections under Article 4 of Chapter 105 of the General Statutes for the 1997-98 fiscal year the one-time computer programming costs of implementing this act.

Section 3. This act becomes effective January 1, 1998, and applies to returns due on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 784
Proposed Sentae Finance Committee Substitute
S784-CSLJ-5/21

Short Title: Conform Tax Extension Rules. (Public)

Sponsors:

Referred to: Finance.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TAX RELIEF AND SIMPLIFICATION BY CONFORMING STATE TAX LAW TO THE FEDERAL RULE THAT GRANTS A FILING EXTENSION EVEN IF THE REQUEST IS NOT ACCOMPANIED BY PAYMENT.

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Section 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall ~~annually~~ pay to the Secretary of ~~Revenue, at the time the report and statement are due,~~ Revenue a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment

in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment, Health, and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter."

Section 3. G.S. 105-129 reads as rewritten:

"**§ 105-129. Extension of time for filing returns.**

~~The~~ A return required by this Article ~~shall be~~ is due on or before the ~~dates specified unless the Secretary of Revenue grants an extension on or before the due date of the return. The Secretary of Revenue for good cause may extend the time for filing any return under this Article. A taxpayer requesting an extension of time for filing shall, on or before the date the return is due, submit an application for an extension of time for filing on a form prescribed by the Secretary and pay the full amount of the tax anticipated to be due.~~ date set in this Article. A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263."

Section 4. G.S. 105-130.17(d) reads as rewritten:

"(d) ~~In case of sickness, absence, or other disability or whenever in his judgment good cause exists, the Secretary may allow further time for filing returns. A taxpayer requesting an extension of time for filing shall, on or before the date the return is due, submit an application for an extension of time for filing on a form prescribed by the Secretary and pay the full amount of the tax anticipated to be due.~~ A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263."

Section 5. The Secretary of Revenue shall draw from collections under Article 4 of Chapter 105 of the General Statutes for the 1997-98 fiscal year the one-time computer programming costs of implementing this act.

Section 6. This act becomes effective January 1, 1998, and applies to returns due on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 784
SHORT TITLE: CONFORM TAX EXTENSION RULES
SPONSOR(S): SEN. WEBSTER

FISCAL IMPACT

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

PRINCIPAL DEPARTMENT AFFECTED: The income tax is administered by the Department of Revenue.

EFFECTIVE DATE: Tax returns due on or after January 1, 1998

BILL SUMMARY: Conforms state tax law to federal rule that grants a filing extension even if the request is not accompanied by payment. Also, the bill allows the Department of Revenue to earmark from 1997-98 income tax payments the one-time cost of implementing the change.

ASSUMPTIONS AND METHODOLOGY: The practical effect of the bill is to **eliminate late filing penalties on extension returns not accompanied by the tax due.** It does not eliminate any penalties for late payment of the tax due. The Department of Revenue does not have a break-down of income tax penalties by type of penalty.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: DAVE CROTTS
DATE: MAY 22, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 784
Proposed Committee Substitute S784-PCSA754

Short Title: Conform Tax Extension Rules. (Public)

Sponsors:

Referred to:

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TAX RELIEF AND SIMPLIFICATION BY CONFORMING STATE TAX LAW TO THE FEDERAL RULE THAT GRANTS A FILING EXTENSION EVEN IF THE REQUEST IS NOT ACCOMPANIED BY PAYMENT.

The General Assembly of North Carolina enacts:

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extends the time for paying the tax expected to be due with the report or return, interest, at the rate established pursuant to G.S. 105-241.1(i), accrues on the tax due from the original due date of the report or return to the date the tax is paid."

Section 2. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall ~~annually~~ pay to the Secretary of ~~Revenue, at the time the report and statement are due,~~ Revenue a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term 'total actual investment in tangible property' as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing 'total actual investment in tangible personal property' there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment, Health, and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such

device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter."

Section 3. G.S. 105-129 reads as rewritten:

"§ 105-129. Extension of time for filing returns.

~~The~~ A return required by this Article ~~shall be~~ is due on or before the ~~dates specified unless the Secretary of Revenue grants an extension on or before the due date of the return. The Secretary of Revenue for good cause may extend the time for filing any return under this Article. A taxpayer requesting an extension of time for filing shall, on or before the date the return is due, submit an application for an extension of time for filing on a form prescribed by the Secretary and pay the full amount of the tax anticipated to be due.~~ date set in this Article. A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263."

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Section 5. The Secretary of Revenue shall draw from collections under Article 4 of Chapter 105 of the General Statutes for the 1997-98 fiscal year the one-time computer programming costs of implementing this act.

Section 6. This act becomes effective January 1, 1998, and applies to returns due on or after that date.

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5-22-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Buff David	DOR
John Gaito	DOR
Nancy Pomeranz	DOR
George Long	DOR
Patti Seawell	DOR
D. Powell	DOR
Paul Sloan	OSBM
Leighton Ropp	ZDM, PA
David Bowie	DACDC 2PL
Ed Regan	N.C.A.C.C.
Steve Keene	NC Med. Society

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5-22-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Wood	Carolina Research Grp
Rob Schofield	NCJCDC
Phil Schofield	"

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, May 22, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **529** No Tax Rollback on Condemnation
Sequential Referral: None
Recommended Referral: None

H.B. **643** Belmont Annexation Agreement
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

S.B.(CS #1) **439** Securtities/Investment Advisers/AB.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **466** Tax Exempt Parental Savings Trust Fund
Draft Number: PCS8705
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **784** Conform Tax Extension Rules
Draft Number: PCSA754
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**875** Revise Records Laws-2

Draft Number:	PCS1815
Sequential Referral:	none
Recommended Referral:	none
Long Title Amended:	No

TOTAL REPORTED: 6

Committee Clerk Comment: SB 439, SB 466, and SB 875 were taken up in Sen. Finance Comm. on 5/20/97.

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 28, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 23 members of the Committee present. Senator David W. Hoyle, Co-Chairman, presided. Senator Hoyle introduced the Pages, they are Natalie Harvey from Lincolnton, N. C., sponsored by Senator Hoyle and Drew Ledbetter from Lincolnton, N. C., sponsored by Senator Hoyle.

Senator Hoyle pointed out that we would be hearing discussion only on S. B. 913-Local Transit Revenue Options and that a vote would not be taken on this bill today.

S. B. 913 - Local Transit Revenue Options

Senator Gulley came to explain the bill. He moved for adoption of committee substitute to the bill, motion passed. The following people spoke in support of the bill:

1. Mayor Margaret Kluttz of the City of Salisbury.

2. Mr. Willie "Bill" Pitt, who is Member of the City Council in Wilson, N. C. and is also a Member of the Board of Directors of the League of Municipalities.

3. Mr. Parks Helms from the Charlotte Chamber of Commerce

4. Ms. Christie Cameron, who is a former Member of the Triangle Transit Authority.

5. Mr. Peter Keeber, Vice President of NATIONS BANK.

6. Mr. Dave King, Director of Railroad Division of Department of Transportation.

The following persons spoke in opposition to the Bill:

1. Mr. Marvin Mussellwhite spoke in opposition to the part of the bill that deals with rental cars. He represents Hertz Rental Cars.

2. Mr. Glenn Jernigan who represents Dollar Rent-A-Car spoke in opposition to the sales tax portion of the Bill.

The Meeting was opened for discussion and questions by Members of the Committee.

Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2

Attachment #1

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, MAY 28, 1997

12:00 NOON, ROOM 544

S.B. 913 - LOCAL TRANSIT REVENUE OPTIONS -
SENATOR GULLEY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 913

Short Title: Local Transit Revenue Options. (Public)

Sponsors: Senators Gulley, Shaw of Cumberland; Ballance, Cooper, Dannelly, Horton, Hoyle, Jordan, Kinnaird, Ledbetter, Lucas, Miller, Odom, Phillips, Reeves, Rucho, Weinstein, Wellons, and Winner.

Referred to: Finance.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE SUPPLEMENTAL SOURCES OF REVENUE FOR LOCAL GOVERNMENT TRANSIT FINANCING.

The General Assembly of North Carolina enacts:

Section 1. The title of Subchapter VIII of Chapter 105 of the General Statutes reads as rewritten:

"SUBCHAPTER VIII. LOCAL GOVERNMENT ~~SALES AND USE TAX.~~ TAXES."

Section 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding two new Articles to read:

"ARTICLE 43.

"Local Government Sales and

Vehicle Rental Taxes for Public Transit.

"**§ 105-505. Short title; purpose.**

This Article shall be known as the Local Government Public Transit Tax Act. This Article gives Regional Public Transportation Authorities and the counties of this State an opportunity to obtain additional sources of revenue with which to meet their needs for financing local public transportation systems. It provides these local governments with authority to levy one-half percent (1/2%) sales and use taxes and five percent (5%) gross receipts taxes on short-term vehicle rentals.

"**§ 105-506. Definitions.**

The definitions in G.S. 160A-601 and G.S. 105-164.3 and the following definitions apply to this Article:

(1) Long-term lease or rental. -- Defined in G.S. 105-187.1.
(2) Motorcycle. -- Defined in G.S. 20-4.01.
(3) Net proceeds. -- Gross proceeds less the cost of administering and collecting the tax. In the case of a tax collected by a taxing unit, the cost of administering and collecting the tax shall be determined by the finance officer, but may not exceed seven percent (7%) of the gross proceeds.
(4) Private passenger vehicle. -- Defined in G.S. 20-4.01.
(5) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.
(6) Short-term lease or rental. -- A lease or rental that is not a long-term lease or rental.
(7) Taxing unit. -- A Regional Public Transportation Authority or a county that levies a tax under this Article.

"**§ 105-507. Limitations.**

(a) Levy by County. -- A county may not levy a tax under this Article unless the county or at least one unit of local government in the county operates a public transportation system.

(b) Levy by County Located in Authority. -- A county may not levy a tax under this Article that has been levied by an Authority in which the county is located. A county may not levy a tax under this Article without giving an Authority in which it is located six months' written notice of its intent to levy. If a county located within an Authority has levied a tax under this Article, the Authority may levy the same tax, but the Authority's levy may not become effective before the end of six months after the adoption of a resolution levying the tax. The county's authority to levy the tax terminates upon the effective date of the levy of the same tax by the Authority in which the county is located.

(c) Levy by Authority. -- An Authority may not levy or increase a tax under this Article unless the special tax board of the Authority and the board of county commissioners of each county organizing the Authority have first passed a resolution approving the levy or increase, except where the levy or increase in tax is necessary for debt service on bonds or notes that the special tax board and each of the boards of county commissioners had previously approved under G.S. 159-51.

"**§ 105-508. Local election on adoption of sales and use tax.**

(a) Resolution. -- The board of commissioners of a county or the board of trustees of an Authority may direct the county board or boards of elections to conduct an advisory referendum within the county or within the jurisdiction of the Authority on the questions of whether a local sales and use tax at the rate of one-half percent (1/2%) will be levied in accordance with this Article. The election shall be held on a date jointly agreed upon by the boards and shall be held in accordance with the procedures of G.S. 163-287. The board of commissioners or board of trustees shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. -- The form of the question to be presented on a ballot for a special election concerning the levy of each tax authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current two percent (2%) local sales and use taxes, to be used only for public transportation systems.'

"**§ 105-509. Levy and collection of sales and use tax.**

(a) Levy. -- If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board of commissioners of the county or the board of trustees of the Authority may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. In addition, if no referendum has been held pursuant to this Article within five years at which the tax has been defeated, the board of commissioners of a county or the board of trustees of an Authority may, by resolution, after not less than 10 days' public notice and after a public hearing, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

(b) Administration. -- Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Article 43 of Chapter 105 of the General Statutes'.

(c) Food Exempt. -- A tax levied under this Article does not apply to the sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

"**§ 105-510. Levy and collection of vehicle rental tax.**

(a) Levy. -- The board of commissioners of a county or the board of trustees of an Authority may, by resolution, after not less than 10 days' public notice and after a public hearing, levy on a retailer who is engaged in the business of leasing or renting private passenger vehicles or motorcycles a tax at a rate of up to five percent (5%) of the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. A tax imposed under this section applies to short-term leases or rentals

made by a retailer whose place of business or inventory is located within the jurisdiction of the taxing unit. This tax is in addition to all other taxes.

(b) Effective Date. -- A tax imposed under this section becomes effective on the date set by the board of commissioners or the board of trustees in the resolution imposing the tax. The effective date must be the first day of a month and may not be earlier than the first day of the second month after the board adopts the resolution.

(c) Collection. -- A tax imposed under this section shall be collected by the taxing unit but shall otherwise be administered in the same manner as the optional gross receipts tax imposed by G.S. 105-187.5. Like the optional gross receipts tax, a tax imposed under this section is to be added to the lease or rental price of a private passenger vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax imposed under this section applies regardless of whether the retailer who leases or rents the private passenger vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax imposed under this section must be paid to the taxing unit by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the private passenger vehicle or motorcycle had elected to pay the optional gross receipts tax.

(d) Penalties and Remedies. -- The penalties and remedies that apply to local sales and use taxes imposed under this Subchapter apply to a tax imposed under this section. A taxing unit may exercise the same powers in collecting the tax imposed under this section that a county may exercise in collecting local sales and use taxes under this Subchapter.

(e) Exemptions and Refunds. -- No exemptions are allowed from a tax imposed under this section. No refunds are allowed for a tax lawfully imposed under this section.

"§ 105-511. Distribution and use of taxes.

(a) Distribution of Sales and Use Taxes. -- The Secretary shall, on a quarterly basis, allocate to each taxing unit the net proceeds of the tax levied under G.S. 105-509 by that unit. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing unit, the Secretary shall allocate these taxes among the taxing units in proportion to the amount of taxes collected in each unit under this Article in that month and shall include them in the quarterly distribution.

The Secretary shall distribute to each Authority the net proceeds of the tax levied by the Authority. The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate public transportation systems. No proceeds shall be distributed to a county that does not operate a public transportation system or to a unit of local government that does not operate a public transportation system.

(b) Distribution of Vehicle Rental Taxes. -- An Authority that levies a tax under G.S. 105-510 shall retain the proceeds of the tax. A county that levies a tax under G.S. 105-510 shall distribute the net proceeds of the tax quarterly on a per capita

basis among the taxing county and the units of local government in the county that operate public transportation systems. No proceeds shall be distributed to a county that does not operate a public transportation system or to a unit of local government that does not operate a public transportation system.

(c) Use. -- An Authority may use the proceeds of a tax levied under this Article to carry out its purposes provided in Article 26 of Chapter 160A of the General Statutes. A county or other unit of local government may use the net proceeds distributed to it under this Article only for financing, constructing, operating, and maintaining local public transportation systems.

"ARTICLE 44.

"Local Government Vehicle

Registration Tax for Public Transit.

"**§ 105-514. Limitations.**

This Article applies only to counties that are not located within the territorial jurisdiction of a Regional Public Transit Authority created pursuant to Article 26 of Chapter 160A of the General Statutes. A county may not levy a tax under this Article unless the county or at least one unit of local government in the county operates a public transportation system.

"**§ 105-515. Levy of vehicle registration tax.**

The board of commissioners of a county may, by resolution, after not less than 10 days' public notice and a public hearing, levy an annual registration tax on motor vehicles with a tax situs within the county. The tax must be a full dollar amount and may not exceed five dollars ($5.00). A tax levied under this section is in addition to any other motor vehicle license or registration tax.

The tax applies to vehicles required to pay a tax under G.S. 20-88, except trailers, or pay a tax under G.S. 20-87(1), (2), (4), (5), (6), or (7). The tax situs of a motor vehicle for the purpose of this Article is its ad valorem tax situs. If the vehicle is not subject to ad valorem tax, its tax situs for the purpose of this Article is the ad valorem tax situs it would have if it were subject to ad valorem tax.

The effective date of a tax levied under this section must be the first day of a calendar month set by the board of commissioners in the resolution levying the tax and shall be no earlier than the first day of the third calendar month after the adoption of the resolution.

"**§ 105-516. Administration.**

The Division of Motor Vehicles of the Department of Transportation shall collect and administer a tax levied under this section. Immediately after adopting a resolution levying, modifying, or repealing a tax under this section, the Commission shall deliver a certified copy of the resolution to the Division of Motor Vehicles. A tax levied under this section is due at the same time and subject to the same restrictions as the tax levied in G.S. 20-87 and G.S. 20-88. The tax shall be prorated in accordance with G.S. 20-95. The Commissioner of Motor Vehicles may adopt rules necessary to administer the tax.

"**§ 105-517. Modification or repeal of tax.**

The board of commissioners of a county may, by resolution, repeal the levy of the tax under this section, or increase or decrease the rate of tax, under the same procedures as provided in G.S. 105-515. The repeal, increase, or decrease of the tax shall become effective on the first day of a month and may not become effective before the first day of the third calendar month after the adoption of the resolution. The repeal or reduction of a tax under this Article does not affect a liability for a tax that attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

"**§ 105-518. Distribution and use of tax proceeds.**

The Commissioner of Motor Vehicles shall credit the proceeds of each tax levied under this Article to a special account and distribute the net proceeds on a quarterly basis. Interest on the special account shall be credited quarterly to the Highway Fund to reimburse the Division of Motor Vehicles for the cost of collecting and administering the tax.

The Commissioner of Motor Vehicles shall allocate to each taxing county the net proceeds of the tax levied by that county. The Commissioner shall distribute the tax proceeds on a per capita basis among the taxing county and the units of local government in the county that operate public transportation systems. No proceeds shall be distributed to a county that does not operate a public transportation system or to a unit of local government that does not operate a public transportation system.

A unit of local government may use the proceeds distributed to it under this Article only for financing, constructing, operating, and maintaining local public transportation systems. As used in this section, the term 'public transportation system' has the meaning provided in G.S. 105-506."

Section 3. Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-211.2. Privilege license tax on nonresidential parking spaces.**

(a) Authorization. -- A city may levy an annual privilege license tax on every person who owns parking spaces and provides them to others, at the rate of up to five dollars ($5.00) per parking space. The tax applies whether the spaces are provided to others free of charge, pursuant to a lease, or for a fee. The tax applies to parking spaces owned as of January 1. If the owner disposes of a parking space during the year, the tax on that space for the year shall be reduced in proportion to the number of months during the year it was not owned by the taxpayer.

(b) Exemptions. -- A tax levied under this section does not apply to:

(1) A person who owns 10 or fewer parking spaces.

(2) A federal, State, or local government agency.

(3) Parking spaces provided exclusively for residential parking.

(4) Parking spaces owned by a nonprofit religious organization and provided to others free of charge.

(c) Collection. -- A tax levied under this section shall be billed with the taxpayer's property taxes, is payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real

property taxes can be collected. Delinquent taxes are a lien on the real property that includes the parking spaces on which the taxes are levied."

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

Section 5. A tax levied under Article 43 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 43 of Chapter 105 of the General Statutes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 913
Proposed Senate Finance Committee Substitute
S913-CSLCX-5/27

Short Title: Local Transit Revenue Options. (Public)

Sponsors:

Referred to: Finance.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE SUPPLEMENTAL SOURCES OF REVENUE FOR LOCAL GOVERNMENT TRANSIT FINANCING.

The General Assembly of North Carolina enacts:

Section 1. The title of Subchapter VIII of Chapter 105 of the General Statutes reads as rewritten:

"SUBCHAPTER VIII. LOCAL GOVERNMENT ~~SALES AND USE TAX.~~ TAXES."

Section 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 43.

"Local Government Sales and Use Taxes for Public Transportation.

"**§ 105-505. Short title; purpose.**

This Article is the Local Government Public Transportation Sales Tax Act and may be cited by that name. This Article gives Regional Public Transportation Authorities and the counties of this State an opportunity to obtain an additional source of revenue with which to meet their needs for financing local public transportation systems. It provides these local governments with authority to levy one-half percent (1/2%) sales and use taxes.

"**§ 105-506. Definitions.**

The definitions in G.S. 105-164.3 and G.S. 160A-601 and the following definitions apply in this Article:

(1) Net proceeds. -- Gross proceeds less the cost of administering and collecting the tax.

(2) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

(3) Taxing unit. -- A Regional Public Transportation Authority or a county that levies a tax under this Article.

"§ 105-507. Limitations.

(a) Levy by County. -- A county may not levy a tax under this Article unless the county or at least one unit of local government in the county operates a public transportation system.

(b) Levy by County Located in Authority. -- A county may not levy a tax under this Article that has been levied by an Authority in which the county is located. A county may not levy a tax under this Article without giving an Authority in which it is located six months' written notice of its intent to levy the tax. If a county located within an Authority has levied a tax under this Article, the Authority may levy the same tax, but the Authority's levy may not become effective before the end of six months after the adoption of a resolution levying the tax. The county's authority to levy the tax terminates upon the effective date of the levy of the same tax by the Authority in which the county is located.

(c) Levy by Authority. -- An Authority may not levy a tax under this Article unless the following conditions have been met:

(1) The Authority has developed a financial plan that has been reviewed and approved by each unit of

government that appoints members to the board of trustees. The financial plan must provide for equitable distribution of the tax proceeds in consideration of the identified needs of local public transportation systems, county-wide human service transportation systems, regional system development, and expansion of public transportation service to unserved areas within the jurisdiction of the Authority.

(2) The special tax board of the Authority and the board of county commissioners of each county organizing the Authority have passed a resolution approving the levy, except where the levy is necessary for debt service on bonds or notes that the special tax board and each of the boards of county commissioners had previously approved under G.S. 159-51.

"**§ 105-508. Local election on adoption of sales and use tax.**

(a) Resolution. -- The board of commissioners of a county or the board of trustees of an Authority may direct the county board or boards of elections to conduct an advisory referendum within the county or within the jurisdiction of the Authority on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied in accordance with this Article. The election shall be held on a date jointly agreed upon by the boards and shall be held in accordance with the procedures of G.S. 163-287. The board of commissioners or board of trustees shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. -- The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current two percent (2%) local sales and use taxes, to be used only for public transportation systems.'

"**§ 105-509. Levy and collection of sales and use tax.**

If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board of commissioners of the county or the board of trustees of the Authority may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Article, the adoption, levy, collection, administration,

and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Article 43 of Chapter 105 of the General Statutes'.

A tax levied under this Article does not apply to the sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

"**§ 105-510. Distribution and use of taxes.**

(a) Distribution. -- The Secretary shall, on a quarterly basis, allocate to each taxing unit the net proceeds of the tax levied under this Article by that unit. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing unit, the Secretary shall allocate these taxes among the taxing units in proportion to the amount of taxes collected in each unit under this Article in that month and shall include them in the quarterly distribution.

The Secretary shall distribute to each Authority the net proceeds of the tax levied by the Authority. The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate public transportation systems. No proceeds shall be distributed to a county that does not operate a public transportation system or to a unit of local government that does not operate a public transportation system.

(b) Use. -- An Authority may use the proceeds of a tax levied under this Article to carry out its purposes provided in Article 26 of Chapter 160A of the General Statutes. The Authority shall allocate the proceeds in accordance with its financial plan developed pursuant to G.S. 105-507 and any periodic updates of the plan.

Before using the net proceeds distributed to it under this Article, a county must develop a financial plan and distribute it to each unit of local government in the county that operates a local public transportation system. The financial plan must provide for equitable allocation of the net proceeds distributed to the county in consideration of the identified needs of local public transportation systems in the county, county-wide human service transportation systems, and expansion of public transportation service to unserved areas in the county. The county must update the financial plan periodically. The county

must allocate the net proceeds distributed to it in accordance with this financial plan and use the net proceeds only for financing, constructing, operating, and maintaining local public transportation systems.

Any other unit of local government may use the net proceeds distributed to it under this Article only for financing, constructing, operating, and maintaining local public transportation systems."

Section 3. G.S. 20-97 reads as rewritten:

"**§ 20-97. Taxes ~~compensatory; no additional tax.~~ credited to Highway Fund; municipal vehicle taxes.**

(a) State Taxes to Highway Fund. -- All taxes levied under the ~~provisions of~~ this Article are ~~intended as~~ compensatory taxes for the use and privileges of the public highways of this ~~State, and shall be paid by the Commissioner to the State Treasurer, to~~ State. The taxes collected shall be credited ~~by him to the State Highway Fund; and no~~ to the State Highway Fund. Except as provided in this section, no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the ~~State of North Carolina, except that cities~~ State.

(b) General Municipal Vehicle Tax. -- Cities and towns may levy a tax of not more than five dollars ($5.00) per year upon any vehicle resident ~~therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed~~ in the city or town. The proceeds of the tax may be used for any lawful purpose.

(c) Municipal Vehicle Tax for Public Transportation. -- A city or town that that operates a public transportation system as defined in G.S. 105-506 may levy a tax of not more than five dollars ($5.00) per year upon any vehicle resident in the city or town. The tax authorized by this subsection is in addition to the tax authorized by subsection (b) of this section. A city or town may not levy a tax under this section, however, to the extent the rate of tax, when added to the general motor vehicle taxes levied by the city or town under subsection (b) of this section and under any local legislation, would exceed thirty dollars ($30.00) per year. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems.

(d) Municipal Taxi Tax. -- Cities and towns may levy a tax of not more than fifteen dollars ($15.00) per year upon each vehicle operated in ~~such~~ the city or town as a taxicab. The proceeds of the tax may be used for any lawful purpose.

~~(a1) to (a5). Repealed by Session Laws 1983, c. 188, s. 2.~~

~~(b)~~ (e) No Additional Local Tax. -- No ~~additional franchise tax, license tax, or other fee shall be imposed by the State against any franchise motor vehicle carrier taxed under this Article nor shall any~~ county, city or town may impose a franchise ~~tax~~ tax, license tax, or other fee upon ~~them, except that cities and towns may levy a license tax not in excess of fifteen dollars ($15.00) per year on each vehicle operated in such city as a taxicab as provided in subsection (a) hereof.~~ a motor carrier unless the tax is authorized by this section.

~~(c) Repealed by Session Laws 1993, c. 321, s. 146.~~"

Section 4. Chapter 105 of the General Statutes is amended by adding a new Subchapter to read:

"SUBCHAPTER IX. MULTICOUNTY TAXES.

"**§ 105-550. Definitions.**

The definitions in G.S. 105-164.3 and 160A-601 and the following definitions apply in this Article:

(1) Long-term lease or rental. -- Defined in G.S. 105-187.1.

(2) Motorcycle. -- Defined in G.S. 20-4.01.

(3) Private passenger vehicle. -- Defined in G.S. 20-4.01.

(4) Short-term lease or rental. -- A lease or rental that is not a long-term lease or rental.

"**§ 105-551. Tax on gross receipts authorized.**

(a) Tax. -- The Board of Trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting private passenger vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes.

(b) Restrictions. -- The Board of Trustees of an Authority may not levy a tax under this section or increase the tax rate of a tax levied under this section until all of the following requirements have been met:

(1) The Board of Trustees has held a public hearing on the tax or the increase in the tax rate after giving at least 10 days' notice of the hearing.

(2) The special tax board of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(3) The board of commissioners of each county included in the territorial jurisdiction of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

"**§ 105-552. Collection and administration of gross receipts tax.**

(a) Effective Date. -- A tax or a tax increase levied under this Subchapter becomes effective on the date set by the Board of Trustees in the resolution levying the tax or the tax increase. The effective date must be the first day of a month and may not be earlier than the first day of the second month after the Board of Trustees adopts the resolution.

(b) Collection. -- A tax levied by an Authority under this Subchapter shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Subchapter is to be added to the lease or rental price of a private passenger vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Subchapter applies regardless of whether the retailer who leases or rents the private passenger vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under this Subchapter must be paid to the Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the private passenger vehicle or motorcycle had elected to pay the optional gross receipts tax.

(c) Penalties and Remedies. -- The penalties and remedies that apply to local sales and use taxes levied under Subchapter VIII of this Chapter apply to a tax levied under this Subchapter. The Board of Trustees of an Authority may exercise any power the Secretary of Revenue or a board of county commissioners may exercise in collecting local sales and use taxes.

"**§ 105-553. Exemptions and refunds.**

No exemptions are allowed from a tax levied under this Subchapter. No refunds are allowed for a tax lawfully levied under this Subchapter.

"**§ 105-554. Use of tax proceeds.**

An Authority that levies a tax under this Subchapter may use the proceeds of the tax for any purpose for which the Authority is authorized to use funds. Authorized purposes for which an Authority may use funds include the following:

(1) Pledging funds in connection with the financing of a public transportation system or any part of a public transportation system.

(2) Paying a note, bond, or other obligation entered into by the Authority pursuant to Article 26 of Chapter 160A.

"**§ 105-555. Repeal of tax or decrease in tax rate.**

The Board of Trustees of an Authority may repeal a tax levied under this Subchapter or decrease the tax rate of a tax levied under this Subchapter. The same restrictions that apply to the levy of a tax or an increase in a tax rate under this Subchapter apply to the repeal of the tax or a decrease in the tax rate.

A tax repeal or a tax decrease becomes effective on the date set by the Board of Trustees in the resolution repealing or decreasing the tax. The effective date must be on the first day of a month and may not be earlier than the first day of the second month after the Board of Trustees adopts the resolution. Repeal or decrease of a tax levied under this Subchapter does not affect the rights or liabilities of an Authority, a taxpayer, or another person arising before the repeal or decrease."

Section 5. A tax levied under Article 43 of Chapter 10 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 43 of Chapter 105 of the General Statutes.

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

EXPLANATION OF SENATE BILL 913

Proposed Committee Substitute

Local Transit Revenue Options

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: May 28, 1997
SPONSOR: Senator Gulley

This bill provides local governments with revenue options to finance local public transportation systems, as follows:

1. It authorizes counties and regional public transportation authorities to levy a ½ cent local sales tax if approved by the voters of the county or region.
2. It authorizes cities to levy an additional $5 motor vehicle tax.
3. It authorizes regional public transportation authorities to levy a gross receipts tax of up to 5% on short-term motor vehicle rentals.

A regional public transportation authority is an entity created by three counties under Article 26 of Chapter 160A of the General Statutes to provide a public transportation system for the region. The authority is governed by a board of trustees appointed by the counties creating the authority and larger cities within the counties. Currently, there is only one regional transportation authority, the Triangle Transit Authority for Wake, Durham, and Orange Counties.

A public transportation system is defined broadly in the bill to include any combination of real and personal property established for purposes of public transportation. It does not include, however, streets, roads, and highways not dedicated to public transportation or related parking.

Section 2 of the bill authorizes counties and regional transportation authorities to levy a ½ cent sales tax only if the tax is approved by the voters of the county or region, as applicable. The proceeds of the tax must be used to finance, construct, operate, and maintain local public transportation systems. The tax does not apply to food. In other respects, it will be administered in the same way as the existing local sales and use taxes.

A county may not levy the sales tax unless the county or at least one unit of government within the county operates a local public transportation system. A sales tax levied by a county will be distributed between the county and other

units in the county that operate local public transportation systems, on a per capita basis. The county must develop a financial plan for equitable allocation of the proceeds it receives based on the identified needs of local public transportation systems in the county and planned expansion of public transportation to unserved areas. The county must allocate the tax proceeds it receives based on this financial plan.

An authority may not levy the sales tax unless every county within the region has approved the levy. Before levying the sales tax, the authority must also adopt a financial plan that has been reviewed and approved by the local governments within the region. The authority must allocate tax proceeds it receives in accordance with the financial plan.

A county that is located within the jurisdiction of a regional public transportation may not levy the sales tax if the authority levies it, and must give the authority six months' advance notice of the intent to levy. Thus, you would never have a duplicate tax levied by both a county within a regional transportation authority and the authority itself.

Section 3 of the bill authorizes municipalities to levy an additional $5 motor vehicle tax, to be used only to finance, construct, operate, and maintain local public transportation systems. Current law already authorizes municipalities to levy a $5 annual motor vehicle tax. Many municipalities have local legislation authorizing them to levy an increased amount. Section 3 adds an extra authorization for $5 more. If that $5 would cause the municipality's total local motor vehicle tax to exceed $30, however, the additional $5 tax may not be levied. The City of Charlotte and the Town of Matthews are authorized by local act to levy annual motor vehicle taxes of $30. These local units are the only ones that would currently be affected by this limitation.

Section 4 of the bill authorizes a regional public transportation authority to levy a gross receipts tax of up to 5% on retailers within the region engaged in the business of renting private passenger motor vehicles and motorcycles. The tax applies to short-term rentals only. The tax will be collected by the authority but is otherwise administered in the same way as the optional highway use tax on gross receipts from vehicle rentals. That tax is 8% on short-term rentals, so the combined tax within the jurisdiction of the authority would be 13%. The authority may use the proceeds of the tax for its public transportation purposes. Before levying or increasing the tax, the authority must obtain approval from each county in the region.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 913
SHORT TITLE: Local Transit Revenue Options
SPONSOR(S): Senator Gulley

$ Millions
FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Local Gov. REVENUES					
Sales Tax	$92.13	$ 194.9	$205.6	$216.9	$228.8
Gross Receipts	19.8	20.5	21.2	21.9	22.7
Vehicle Registrations	17.2	17.2	17.2	17.2	17.2
TOTAL	**$ 129.13**	**232.6**	**244.0**	**256.0**	**268.7**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local units of government that provide public transportation
Department of Revenue Sales and Use Tax Division
Department of Revenue Corp., Excise, and Ins. Tax Division

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY:
The proposed legislation authorizes local governments to implement several new revenue sources for financing public transit systems.

- County units of government and transit authorities are given the right to levy a ½ cent sales and use tax and a 5% vehicle rental tax. The taxing unit of government or the authority must pass a resolution and hold a public hearing before an effective date for a transportation tax can be set. If an additional ½ cent sales tax is to be imposed, the board of commissioners must hold an election.

  The vehicle rental tax applies only to passenger vehicles and motorcycles held for lease and located within the territorial jurisdiction of the transportation authority. The transportation authority is given the power to levy this tax after a public hearing has been held and a resolution has been adopted. The governing board of commissioners must also adopt a resolution.

The revenues from the sales and use tax are to be collected in the same manner as the ½ cent sales and use tax under Article 39 of the Revenue Laws. The 5% gross receipts tax is to be collected by the authority. The additional revenue form ½ cent sales tax and the 5% transportation tax are to be used by the unit of local government or the authority for financing public transportation needs.

- Cities and towns are authorized to levy a $5.00 municipal vehicle tax for public transportation. This tax is in addition to the general municipal vehicle tax authorized under G.S. 20-97(B). The revenue from this registration tax is to be used for public transportation funding only.

ASSUMPTIONS AND METHODOLOGY:
There are thirty counties that are either a part of a transit authority or have at least one municipality that provides public transportation services. Table 1, shows the amount of revenue expected from the imposition of a ½ cent sales and use tax fiscal year 1997-98. The distribution is per capita, in accordance with Article 39 of the sales and use tax statutes. The revenue amounts recorded under the fiscal impact section assumes a six month collection period for the first year. County units of government and existing authorities will have to prepare resolutions, hold public hearings, and referendums before the tax can be imposed. The estimate also assumes that voters in each county will vote in favor of the tax. The growth in the revenue projections for an additional ½ cent sales and use tax are based on forecast values used in the General Fund financial model.

The act does not prohibit a county from establishing a public transportation service and implementing the ½ cent sales tax. If all 100 counties of the State were to levy such a tax the revenue for fiscal year 1997-98 is estimated to be $365.2 million.

There is currently a gross receipts tax on the lease of motor vehicles authorized under General Statutes 105-187.5. The rate is 3% on long term leases and 8% on short term leases. This act proposes a tax of 5% on the short term leases. In fiscal year 1995-96 the revenue from the gross receipts tax on short term leases of motor vehicles was $28.7 million. The expected revenue from an additional 5% tax to be applied to the same base is $18.6 million for the same period. The growth in the 5% estimate is the same growth expected in Highway Trust Fund Revenues for fiscal years 1996-97 through 2001-02.

The $5.00 municipal vehicle tax for public transportation can be levied without restriction to an existing public transportation service. The estimate is based on registration records provided by the Department of Transportation on vehicle registrations by municipality.

TABLE I

County	1/2 Cent Tax	County	1/2 Cent Tax
Bertie	$1,032,359	Hertford	$1,115,243
Buncombe	$9,564,967	Mecklenburg	$29,554,658
Camden	$321,412	Nash	$4,268,274
Carawba	$6,380,468	New Hanover	$7,183,425
Chowan	$705,162	Northampton	$1,033,007
Cumberland	$14,901,655	Orange	$5,385,561
Currituck	$810,737	Pasquotank	$1,670,695
Davidson	$6,907,045	Perquimans	$534,407
Durham	$9,708,941	Person	$1,626,161
Forsyth	$14,170,910	Pitt	$5,948,294
Franklin	$2,124,712	Vance	$2,009,612
Gaston	$8,927,628	Wake	$26,836,593
Granville	$4,141,504	Warren	$914,167
Guilford	$18,854,202	Watauga	$2,025,071
Halifax	$2,877,499	Wilson	$3,420,234
Total	$194,954,597		

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk
APPROVED BY:
DATE: May28, 1997

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

Date 5/28/97

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JAMES BELL	ATTORNEY
WHITE WATKINS	AFMA
Christie Cameron	TTA
Pat Moon	City of Hickory
Dave McDee	City of Hickory
Sanford Crow	NCDOT - PTD
JOYCE BROWN	TOWN OF CHAPEL HILL
VELHTON PAPER	ZDA RA
Joe Olinger	Sierra Club, CCNL
Katherine Davis	ElectriCities
Gene Causby	E - EBE

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/28/97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	Moore & Van Allen
Don Tuttle	Thomasville
Sam Misenheimer	Thomasville / City Mgr.
Thomas Hazlett	News + Observer
Curt Williams	Gov's Office
Sam Kirby	NCUC
Jim Cain	Kilpatrick Stockton
Ralph Hassell	Bessemer City
Buz Denil	DOR
Jay Hare	DOR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/28/97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Lofton	NCAFL
Margaret Klatty	city of Salisbury
Richard Hagan	Town of Spring Lake
Foster Owen	City of Salisbury
William "Bill" Pitt	Nelson N.C.
George Lowe	NC DOR
John Cyrus	N.C. State Grange
Alan Miles	Bailey & Dixon, LLP
Richard Williams	NCMBA
Mike Carpenter	NCMBA
Walter Newman	Nelson D.C.

SENATE FINANCE COMMITTEE

THURSDAY, MAY 29, 1997

8:30 A.M. - ROOM 421 LOB

The Senate Finance Committee met on May 29, 1997, with Senator Kerr presiding. There were 23 committee members present.

S.B. 712 - Substance Abuse Specialists

Senator Reeves was recognized to explain this bill and offered a proposed committee substitute. On his motion, this PCS was adopted for discussion. At the conclusion of his explanation of this bill, Senator Reeves introduced the following people who are in support of this bill:

Lee Walton, Consultant with the Division of Mental Health
Jane Albers, President of the Certification Board
Jim Scarborough, Administrator for the Board
Ajula Joy, member of the Board
Ann Christian, Legal counsel to the Certification Board

There were several questions from the committee members to the bill sponsor and to the people supporting the bill. Mr. Doug Baker, Substance Abuse Section of the Department of Mental Health, also spoke in support of this bill.

Senator Larry Shaw was recognized for a motion that this bill be given a "favorable" report as to the committee substitute bill and the motion passed. Copy of bill, committee substitute bill, fiscal note and assessment report included in the minutes.

S.B. 516 - Lead-Based Paint Mgmt/AB

Senator Lee was recognized to give a report for the subcommittee on S.B. 516. The subcommittee members agreed that this bill needs to move forward and on motion by Senator Lee, the committee substitute was given a "favorable" report by the committee. Senator Ballantine informed the committee that he plans to offer a floor amendment to this bill. Copy of bill, committee substitute, and fiscal note included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

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

S.B. 271 and S.B. 938 were not heard in this committee meeting.

Attachment # 1

AGENDA

SENATE FINANCE

May 29, 1997

8:30 A.M. - Room 421

S.B. 271 - Small Business Capital &Growth Act. - Sen. Larry Shaw

S.B. 516 - Lead-Based Paint Mgmt/AB. - Sen. Ballance

S.B. 712 - Substance Abuse Specialists. - Sen. Reeves

S.B. 938 - Construction Worker Training Credit. - Sen. Jordan

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 712

Short Title: Substance Abuse Specialists. (Public)

Sponsors: Senator Reeves.

Referred to: Finance.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO CERTIFY CLINICAL ADDICTIONS SPECIALISTS, PROVIDE SPECIFIC AUTHORITY FOR CERTIFICATION OF CLINICAL SUPERVISORS AND RESIDENTIAL FACILITY DIRECTORS, AND TO MAKE A TECHNICAL CHANGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-113.30 reads as rewritten:

"**§ 90-113.30. Declaration of purpose.**

The North Carolina Substance Abuse ~~Professionals~~ Professional Certification Board, established by G.S. 90-113.32, is recognized as the certifying authority for ~~certified substance abuse counselors and certified substance abuse prevention consultants~~ substance abuse professionals described in this Article in order to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of certified substance abuse ~~counselors and certified substance abuse prevention consultants,~~ professionals, to provide for the establishment of standards for the education of ~~substance abuse counselors and substance abuse prevention consultants,~~ certified substance abuse professionals, and to ensure the availability of ~~substance abuse counseling services and substance abuse prevention services~~ certified substance abuse professional services of high quality to persons in need of these services. It is the purpose of this Article to provide for the regulation of Board-certified persons offering substance abuse counseling services, substance abuse prevention services, or any other substance abuse services for which the Board may grant certification."

Section 2. G.S. 90-113.31 reads as rewritten:

"**§ 90-113.31. Definitions.**

~~In this Article, unless the context clearly requires otherwise, the~~ The following definitions shall apply in this Article:

(1) ~~"Board" means the~~ Board. -- The North Carolina Substance Abuse ~~Professionals~~ Professional Certification Board.

(1a) Certified clinical addictions specialist. -- A person certified by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

(1b) Certified clinical supervisor. -- A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.

(1c) Certified residential facility director. -- A person certified by the Board to practice as a residential facility director in accordance with the provisions of this Article.

(2) ~~"Certified substance abuse counselor" means any~~ Certified substance abuse counselor. -- A person certified by the Board to practice as a substance abuse ~~counseling~~ counselor in accordance with the provisions of this Article.

~~(3) "Substance abuse counseling" means the assessment, evaluation, or provision of counseling to persons suffering from substance abuse or dependency, alcohol abuse or dependency, or drug abuse or dependency.~~

(4) ~~"Certified substance abuse prevention consultant" means any~~ Certified substance abuse prevention consultant. -- A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.

(4a) Credentialing body. -- A board that licenses, certifies, or regulates a profession or practice.

(4b) Deemed status. -- Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a substance abuse specialist may apply individually for certification as a certified clinical addictions specialist.

(4c) Human services field. -- An area of study that focuses on the biological, psychological, and social aspects of human beings.

(4d) Intern. -- A person who successfully completes 300 hours of Board approved supervised practical training and a written examination in pursuit of certification as a substance abuse counselor.

(5) ~~"Prevention" means the~~ Prevention. -- The reduction, delay, or avoidance of alcohol and of other drug use behavior. 'Prevention' includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an

entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.

(6) Professional discipline. -- A field of study characterized by the technical, educational, and ethical standards of a profession.

(7) Substance abuse counseling. -- The assessment, evaluation, and provision of counseling to persons suffering from substance, drug, or alcohol abuse or dependency.

(8) Substance abuse professional. -- A certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director."

Section 3. G.S. 90-113.32 reads as rewritten:

"**§ 90-113.32. ~~Board.~~ Board; composition; voting.**

(a) The Board is created as the certifying authority for substance abuse ~~counselors~~ counselors, ~~and~~ substance abuse prevention ~~consultants~~ consultants, clinical supervisors, clinical addictions specialists, and residential facility directors in North Carolina.

(b) Until the full Board is elected or appointed pursuant to subsection (c) of this section, the Board shall consist of 16 members with one member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The remaining 14 shall be those members of the current North Carolina Substance Abuse ~~Professionals~~ Professional Certification Board, Inc., who have terms that are unexpired as of the effective date of this Article. The initial Board shall appoint an initial Nominating and Elections Committee to fill immediate vacancies on the Board, using the process established in subsection (d) of this section. The election and appointment process of the initial Board shall result in a Board of 19 members by April 1, 1995. As these initial members' terms expire, their successors shall be appointed as described in subsection (c) of this section, until the permanent Board is established, as described in subsection (c) of this section. Time spent as an initial member counts in determining the limitation on consecutive terms prescribed in subsection (e) of this section.

(c) After the initial Board members' terms expire, the Board shall consist of ~~19~~ the following members, all of whom shall reside in North Carolina, appointed or elected as follows:

(1) Eleven professionals certified pursuant to this Article and elected by the certified professionals, at least two of whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the ~~State;~~ State. Three members shall serve as members at large.

(2) Three members at large chosen from laypersons or other professional disciplines who have shown a special interest in the

field of substance abuse, nominated by the Nominations and Elections Committee established by subsection (d) of this section and elected by the ~~Board;~~ Board.

(3) Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Human Resources, appointed by the Chief of Substance Abuse Services Section, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Human Resources, at least one of whom is from the Substance Abuse Services ~~Section;~~ Section.

(4) One member of the public at large appointed by the ~~Governor;~~ ~~and~~ Governor.

(5) One member of the public at large appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and one member of the public at large appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) One member shall represent each of the professional disciplines granted deemed status under G.S. 90-113.41A. The member may be appointed by the professional discipline on or before a date set by the Board. If the professional discipline has at least one association in the State, the member shall be chosen from a list of nominees submitted to the association. The members appointed or elected under this subdivision shall be certified as substance abuse specialists by the professional discipline that the members represent.

No member of the General Assembly shall serve on the Board.

(c1) Every member of the Board shall have the right to vote on all matters before the Board, except for the President who shall vote only in case of a tie or when another member of the Board abstains on the question of whether the professional discipline the member represents shall retain its deemed status.

(d) The Board shall appoint five professionals from the field of substance abuse counseling and substance abuse prevention consulting to serve on the Nominating and Elections Committee. Of these five, at least three shall not be members of the Board. The Board shall appoint a member of the Nominating and Elections Committee to serve as chair. The Committee's purpose is to accept nominations from professionals certified by the Board to fill vacancies on the Board in membership categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and to conduct the election of Board members. The Committee shall solicit nominations from all professionals it has certified under this Article ~~whenever such a vacancy occurs and~~ when elected members' terms are due to expire. The certified professionals shall submit to the Committee all nominations ~~within 90 days~~ beginning 90 days and ending 14 days before the election of new Board members. The

Committee shall furnish all certified professionals with a ballot containing all the nominees for each elected Board member vacancy. In soliciting and making nominations for this process, the Committee shall give consideration to factors that promote representation on the Board by professionals certified by the Board. The Committee shall serve for a two-year term, its successors to be appointed for the same term by the Board.

(e) Members of the Board shall serve for three-year terms. No Board member shall serve for more than two consecutive terms, but a person who has been a member for two consecutive terms may be reappointed after being off the Board for a period of at least one year. When a vacancy occurs in an unexpired term, the Board ~~shall~~ shall, as soon as practicable, appoint temporary members to serve until the next membership election. Time spent as a temporary member does not count in determining the limitation on consecutive terms.

(f) If a member becomes ineligible to serve on the Board for any reason, except when the member has committed an ethical violation that results in the suspension or revocation of the member's professional credentials, the member may fulfill the remainder of the member's term on the Board."

Section 4. G.S. 90-113.33 reads as rewritten:

"§ 90-113.33. Board; powers and duties.

The Board shall:

(1) Examine and determine the qualifications and fitness of applicants for certification to practice in this ~~State as substance abuse counselors and as substance abuse prevention consultants;~~ State.

(1a) Determine the qualifications and fitness of organizations applying for deemed status.

(2) Issue, renew, deny, suspend, or revoke certification to practice in this State or reprimand or otherwise discipline ~~substance abuse counselors and substance abuse prevention consultants~~ certificate holders in this ~~State;~~ State. However, disciplinary actions involving a clinical addictions specialist whose certification is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's decision to the Board. The Board shall, however, have the authority to hear the initial disciplinary action involving a clinical addictions specialist.

(3) Deal with issues concerning ~~reciprocity;~~ reciprocity.

(4) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining ~~exist;~~ exists.

(5) Employ the professional and clerical personnel necessary to carry out the provisions of this Article. The Board may purchase or rent necessary office space, equipment, and ~~supplies;~~ supplies.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a 'contested case', as defined in Chapter 150B, ~~arises;~~ arises.

(7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting in which it considers this representation is ~~desirable;~~ desirable.

(8) Establish fees for applications for examination, certificates of certification and renewal, and other services provided by the ~~Board; and~~ Board.

(9) Adopt any rules necessary to carry out the purpose of this Article and its duties and responsibilities pursuant to this Article.

The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. When the Board exercises its authority under this Article to discipline a person, it may, as part of the decision imposing the discipline, charge the costs of investigations and the hearing to the person disciplined."

Section 5. G.S. 90-113.34 reads as rewritten:

"**§ 90-113.34. Records to be kept; copies of records.**

The Board shall obtain documentation of all proceedings under this Article and a record of all persons certified under it. The record shall show the name, last known place of business, last known place of residence, and date and number of the certificate of certification as a certified substance abuse ~~counselor or~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director for every living certified person. Any interested person in the State is entitled to obtain a copy of that record on application to the Board and upon payment of a reasonable charge that is based on the costs involved in providing the copy. The Board shall keep a hard copy of all records."

Section 6. G.S. 90-113.37 reads as rewritten:

"**§ 90-113.37. Renewal of certification; lapse; revival.**

(a) Every person certified pursuant to this Article who desires to maintain certification status shall apply to the Board for a renewal of certification every other year and pay to the secretary-treasurer the prescribed fee. Renewal of certification is subject to completion of no more than 60 hours of those continuing education requirements established by the Board. A clinical supervisor shall also complete 15 hours of substance abuse clinical supervision or training prior to the certificate being renewed. Certification that is not renewed automatically lapses, unless the Board provides for the late renewal of certification upon the payment of a late fee. No late renewal shall be granted more than five years after a certification expires. A suspended certification is subject to this section's renewal requirements and may be renewed as provided in this section. This renewal does not entitle the certified person to engage in the certified activity or in any other conduct or activity in violation of the order or judgment by which the certification was suspended, until the certification is reinstated. If a certification revoked on disciplinary grounds is reinstated and requires renewal, the certified person shall pay the renewal fee and any applicable late fee.

(b) The Board shall establish the manner in which lapsed certification may be revived or extended."

Section 7. G.S. 90-113.38 reads as rewritten:

"**§ 90-113.38. Maximums for certain fees.**

(a) The ~~combined fees~~ fee to obtain a certificate of certification as a substance abuse counselor, substance abuse prevention consultant, clinical supervisor, or residential facility director may not exceed ~~three hundred dollars ($300.00).~~ three hundred twenty-five dollars ($325.00). The fee to renew a certificate may not exceed one hundred dollars ($100.00).

(b) The fee to obtain a certificate of certification for a clinical addictions specialist pursuant to G.S. 90-113.41A may not exceed one hundred dollars ($100.00). The fee to renew a certificate may not exceed fifty dollars ($50.00). The fee to obtain a certificate of certification for a clinical addictions specialist under G.S. 90-113.40 may not exceed three hundred twenty-five dollars ($325.00). The fee to renew the certificate may not exceed one hundred dollars ($100.00).

(c) There shall be a reexamination fee of one hundred dollars ($100.00) which shall be paid for each reexamination in addition to the fees required under subsection (a) of this section."

Section 8. G.S. 90-113.39 reads as rewritten:

"**§ 90-113.39. Standards for certification.**

The Board shall establish standards for certification of substance abuse professionals. The certification standards of the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse and ~~of the National Association of Alcoholism and Drug Abuse Counselors~~ the standards adopted by professional disciplines granted deemed status may be used as guidelines for the Board's standards. The Board shall publish these required standards separately from its rules so as to provide easy access to the standards."

Section 9. G.S. 90-113.40 reads as rewritten:

"**§ 90-113.40. Requirements for certification.**

(a) The Board shall issue a certificate certifying an applicant as a ~~"Certified Substance Abuse Counselor"~~ 'Certified Substance Abuse Counselor' or as a ~~"Certified Substance Abuse Prevention Consultant"~~ 'Certified Substance Abuse Prevention Consultant' if:

(1) The applicant is of good moral ~~character;~~ character.

(2) The applicant is not and has not engaged in any practice or conduct that would be grounds for disciplinary action under ~~G.S. 90-113.44;~~ G.S. 90-113.44.

(3) The applicant is qualified for certification pursuant to the requirements of this Article and any rules adopted pursuant to ~~it;~~ it.

(4) The applicant has, at a minimum, a high school diploma or a high school equivalency ~~certificate;~~ certificate.

(5) The applicant has signed a form attesting to the intention to adhere fully to the ethical standards adopted by the ~~Board;~~ Board.

(6) The applicant has completed 270 hours of Board-approved ~~education;~~ education. The Board may prescribe that a certain number of hours be in a course of study for substance abuse counseling and that a certain number of hours be in a course of study for substance abuse prevention consulting.

(7) The applicant has documented completion of a minimum of 300 hours of Supervised Practical Training and has provided a Board-approved supervision contract between the applicant and an approved ~~supervisor;~~ supervisor.

(8) The applicant for substance abuse counselor has completed either a total of ~~three years~~ 6,000 hours of supervised experience in the field, whether paid or volunteer, or, if a graduate of a Board-approved masters degree program, a total of ~~18 months~~ 3,000 hours of supervised experience in the field, whether paid or ~~volunteer;~~ ~~and~~ volunteer. The applicant for substance abuse prevention consultant has completed a total of 10,000 hours supervised experience in the field, whether paid or volunteer, or 4,000 hours if the applicant has at least a bachelors degree in a human services field.

(9) The applicant has successfully completed a written examination and an oral examination promulgated and administered by the Board.

(b) The Board shall issue a certificate certifying an individual as a 'Certified Clinical Supervisor' if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section, the applicant:

(1) Has been certified as a substance abuse counselor or a clinical addictions specialist.

(2) Prior to June 30, 1998, the applicant presents proof that the applicant has 12,000 hours experience in alcohol and drug abuse counseling and a bachelors degree or 8,000 hours experience in alcohol and drug abuse counseling and a minimum of a masters degree. After June 30, 1998, the applicant shall present proof that the applicant has a minimum of a masters degree.

(3) Has 6,000 hours experience as a substance abuse clinical supervisor if the applicant has a bachelors degree or 4,000 hours experience if the applicant has a masters degree.

(4) Has 30 hours of substance abuse clinical supervision specific education or training. These hours shall be reflective of the 12 core functions in the applicant's clinical application and practice and may also be counted toward the applicant's recertification as a substance abuse counselor.

(5) Submits a letter of reference from a professional who can attest to the applicant's supervisory competence and two letters of reference

from either counselors who have been supervised by the applicant or professionals who can attest to the applicant's competence.

(6) Successfully completes a written examination administered by the Board.

(c) The Board shall issue a certificate certifying an applicant as a 'Certified Clinical Addictions Specialist' if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section, the applicant meets one of the following criteria:

(1) Criteria A. -- The applicant:

a. Has a minimum or a masters degree with a clinical application in a human services field.

b. Has two years postgraduate supervised substance abuse counseling experience.

c. Submits three letters of reference from certified clinical addictions specialists or certified substance abuse professionals.

d. Has achieved a combined score set by the Board on a masters level written and oral examination administered by the Board.

e. Has attained 180 hours of substance abuse specific training as described in G.S. 90-113.41A.

(2) Criteria B. -- The applicant:

a. Has a minimum of a masters degree with a clinical application in a human services field.

b. Has been certified as a substance abuse counselor.

c. Has one year of postgraduate supervised substance abuse counseling experience.

d. Has achieved a passing score on a masters level written examination administered by the Board.

e. Submits three letters of reference from certified clinical addictions specialists or certified substance abuse professionals.

(3) Criteria C. -- The applicant:

a. Has a minimum of a masters degree in a human services field with a substance abuse specialty that includes 180 hours of substance abuse specific education and training pursuant to G.S. 113.41A.

b. Has one year of postgraduate supervised substance abuse counseling experience.

c. Has achieved a passing score on an oral examination administered by the Board.

d. Submits three letters of reference from certified clinical addictions specialists or certified substance abuse professionals.

(4) Criteria D. -- The applicant has a substance abuse certification from a professional discipline that has been granted deemed status by the Board.

(d) Notwithstanding subsection (c) of this section, the Board may certify a person as a 'Clinical Addictions Specialist' for a limited period of one year from the effective date of this Article upon the submission of proof of one of the following to the Board:

(1) Certification as a substance abuse counselor holding a masters degree with a clinical application in a human services field; the equivalent of two years of full-time postgraduate supervised substance abuse experience; and three letters of reference from certified substance abuse professionals who have masters degrees.

(2) Certification as a substance abuse counselor with a bachelors degree in a human services field; the equivalent of five years of full-time, postgraduate, supervised substance abuse experience; a passing score on a masters level written examination; and submission of three letters of reference from certified substance abuse professionals who have masters degrees.

(3) Certification as a clinical supervisor; a masters degree with a clinical application in a human services field with a substance abuse specialty; and three letters of reference from certified substance abuse professionals who have masters degrees.

(4) Certification as a substance abuse counselor; a masters degree with a clinical application in a human services field with a substance abuse specialty; and three letters of reference from certified substance abuse professionals who have masters degrees.

(5) Certification prior to the effective date of this Article as an alcohol counselor, a drug and alcohol counselor, or a substance abuse counselor; the equivalent of 10 years of documented full-time substance abuse work experience; and three letters of reference from certified substance abuse professionals who have masters degrees.

(6) Certification, licensure, or membership in good standing with a professional discipline that has been granted deemed status.

Renewal of the one-year clinical addictions specialist certification shall be pursuant to G.S. 90-113.37.

(e) Notwithstanding subsection (c) of this section, the Board may certify an applicant as a 'Clinical Addictions Specialist' for a limited period of three years from or beginning October 1, 1998, if the applicant completes and submits proof to the Board that the applicant: (i) has been certified as a substance abuse counselor; (ii) has the equivalent of 10 years of supervised, full-time, substance abuse counseling experience; (iii) has passed a masters level oral and written examination and; (iv) submits three letters of reference from certified substance abuse professionals who hold masters degrees.

(f) The Board shall issue a certificate certifying an applicant as a 'Certified Residential Facility Director' if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section, the applicant:

(1) Has been certified as a substance abuse counselor.

(2) Has 50 hours of Board approved academic or didactic management specific training or a combination thereof.

(3) Submits letters of reference from the applicant's current supervisor and a colleague or co-worker.

(g) The Board shall publish from time to time information in order to provide specifics for potential applicants of an acceptable educational curriculum and the terms of acceptable supervised fieldwork experience."

Section 10. G.S. 90-113.41 reads as rewritten:

"**§ 90-113.41. Examination.**

(a) Except for those individuals applying for certification under G.S. 90-113.41A, ~~Applicants~~ applicants for certification under this Article shall file an application at least 60 days prior to the date of examination and upon the forms and in the manner prescribed by the Board. The application shall be accompanied by the appropriate fee. No portion of this fee is refundable. Applicants who fail an examination may apply for reexamination upon the payment of another examination fee.

(b) Each applicant for certification under this Article shall be examined in an examination that is consistent with the examination requirements of the International Certification Reciprocity Consortium/Alcohol and Other Drug ~~Abuse.~~ Abuse and the standards adopted by professional disciplines granted deemed status.

(c) Applicants for certification shall be examined at a time and place and under the supervision that the Board determines. Examinations shall be given in this State at least twice each year.

(d) Applicants may obtain their examination scores and may review their examination papers in accordance with rules the Board adopts."

Section 11. Article 5C of Chapter 90 of the General Statutes is amended to add a new section to read:

"**§ 90-113.41A. Deemed status.**

(a) To be granted deemed status by the Board, a credentialing body of a professional discipline or its designee shall demonstrate that its substance abuse certification program substantially meets the following:

(1) Each person to whom the credentialing body awards credentials following the effective date of this act meets and maintains minimum requirements in substance abuse specific content areas. Each person also has a minimum of a masters degree with a clinical application in a human services field.

(2) The body requires 180 hours, or the equivalent thereof, of substance abuse specific education and training that covers the following content areas:

a. Basic addiction and cross addiction Physiology and Pharmacology of Psychoactive drugs that are abused.

b. Screening, assessment, and intake of clients.
c. Individual, group, and family counseling.
d. Treatment, planning, reporting, and record keeping.
e. Crisis intervention.
f. Case management and treatment resources.
g. Ethics, legal issues, and confidentiality.
h. Psychological, emotional, personality, and developmental issues.
i. Coexisting physical and mental disabilities.
j. Special population issues, including age, gender, race, ethnicity, and health status.
k. Traditions and philosophies of recovery treatment models and support groups.

(3) The program requires one year or its equivalent of post-degree supervised clinical substance abuse practice. At least fifty percent (50%) of the practice shall consist of direct substance abuse clinical care.

(b) The professional discipline seeking deemed status shall require its members to adhere to a code of ethical conduct and shall enforce that code with disciplinary action.

(c) The Board may grant deemed status to any professional discipline that substantially meets the standards in this section. Once such status has been granted, an individual within the professional discipline may apply to the Board for certification as a certified clinical addictions specialist.

(d) The Standards and Credentialing Committee of the Board shall review the standards of each professional discipline every third year from the date it was granted deemed status to determine if the discipline continues to substantially meet the requirements of this section. If the Committee finds that a professional discipline no longer meets the requirements of this section, it shall report its findings to the Board at the Board's next regularly scheduled meeting. The deemed status standing of a professional discipline's credential may be discontinued by a two-thirds vote of the Board."

Section 12. G.S. 90-113.42 reads as rewritten:

"§ 90-113.42. Exemptions.

It is not the intent of this Article to regulate members of other regulated professions who provide substance abuse services or consultation in the normal course of the practice of their profession. Accordingly, this Article does not apply to any person registered, certified, or licensed by the State to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which ~~he~~ the person is registered, certified, or licensed. Only individuals certified under this Article may use the title ~~"certified substance abuse counselor" or "certified substance abuse prevention consultant"~~ certified substance abuse counselor, certified substance abuse

prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director."

Section 13. G.S. 90-113.43 reads as rewritten:

"**§ 90-113.43. Illegal practice; misdemeanor penalty.**

Except as otherwise authorized in this Article, no person shall:

(1) Practice, attempt to practice, or supervise while holding out to be a certified substance abuse ~~counselor or a~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director without first having obtained a certificate of certification from the ~~Board;~~ Board.

(2) Use in connection with any name any letters, words, numerical codes, or insignia indicating or implying that this person is a certified substance abuse ~~counselor or a~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director unless this person is certified pursuant to this ~~Article;~~ Article.

(3) Practice or attempt to practice as a certified substance abuse ~~counselor or~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director with a revoked, lapsed, or suspended ~~certification;~~ certification.

(4) Aid, abet, or assist any uncertified person to practice as a certified substance abuse ~~counselor or~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director in violation of this ~~Article;~~ Article.

(5) Knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a certified substance abuse ~~counselor or a~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director unless that person is ~~so~~ certified under this ~~Article; or~~ Article.

~~(6) Otherwise violate any of the provisions of this Article or any of the rules adopted pursuant to it.~~

(7) Practice, supervise, or attempt to practice or supervise or knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a designated substance abuse intern without being designated as such by the Board.

A person who engages in any of the illegal practices enumerated by this section is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense."

Section 14. G.S. 90-113.44 reads as rewritten:

"**§ 90-113.44. Grounds for disciplinary action.**

Grounds for disciplinary action include:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain certification or renewal of ~~certification;~~ certification.

(2) The use of drugs or alcoholic beverages to the extent that professional competency is affected, until proof of rehabilitation can be ~~established;~~ established.

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law, until proof of rehabilitation can be ~~established;~~ established.

(4) Conviction of a felony or other public offense involving moral turpitude, until proof of rehabilitation can be ~~established;~~ established.

(5) An adjudication of insanity or incompetency, until proof of recovery from this condition can be ~~established;~~ established.

(6) Engaging in any act or practice violative of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such a ~~violation;~~ violation.

(7) The commission of an act of malpractice, gross negligence, or incompetence in the practice of substance abuse ~~counseling or in~~ counseling, substance abuse prevention ~~consulting;~~ consulting, clinical supervising, or in serving as a clinical addictions specialist or residential facility director.

(8) Practicing as a certified substance abuse ~~counselor or as a~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist or certified residential facility director without a valid ~~certificate; and~~ certificate.

(9) Engaging in conduct that could result in harm or injury to the public."

Section 15. G.S. 90-113.46 reads as rewritten:

"**§ 90-113.46. Application of requirements of Article.**

All persons certified by the North Carolina Substance Abuse ~~Professionals~~ Professional Certification Board, Inc., as of July 1, 1994, shall be certified by the Board pursuant to this Article. All these persons are subject to all the other requirements of this Article and of the rules adopted pursuant to it."

Section 16. Article 5C of Chapter 90 of the General Statues is amended by adding the following new section:

"**§ 90-113.47. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursements to persons certified under this Article."

Section 17. This act becomes effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 712
Proposed Committee Substitute S712-PCS4610

Short Title: Substance Abuse Specialists. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO CERTIFY CLINICAL ADDICTIONS SPECIALISTS, PROVIDE SPECIFIC AUTHORITY FOR CERTIFICATION OF CLINICAL SUPERVISORS AND RESIDENTIAL FACILITY DIRECTORS, AND TO MAKE A TECHNICAL CHANGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-113.30 reads as rewritten:

"**§ 90-113.30. Declaration of purpose.**

The North Carolina Substance Abuse ~~Professionals~~ Professional Certification Board, established by G.S. 90-113.32, is recognized as the certifying authority for ~~certified substance abuse counselors and certified substance abuse prevention consultants~~ substance abuse professionals described in this Article in order to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of certified substance abuse ~~counselors and certified substance abuse prevention consultants,~~ professionals, to provide for the establishment of standards for the education of ~~substance abuse counselors and substance abuse prevention consultants,~~ certified substance abuse professionals, and to ensure the availability of ~~substance abuse counseling services and substance abuse prevention services~~ certified substance abuse professional services of high quality to persons in need of these services. It is the purpose of this Article to provide for the regulation of Board-certified persons offering substance abuse counseling services, substance abuse

prevention services, or any other substance abuse services for which the Board may grant certification."

Section 2. G.S. 90-113.31 reads as rewritten:

"**§ 90-113.31. Definitions.**

~~In this Article, unless the context clearly requires otherwise, the~~ The following definitions shall apply in this Article:

(1) ~~"Board" means the~~ Board. -- The North Carolina Substance Abuse ~~Professionals~~ Professional Certification Board.

(1a) Certified clinical addictions specialist. -- A person certified by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

(1b) Certified clinical supervisor. -- A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.

(1c) Certified residential facility director. -- A person certified by the Board to practice as a residential facility director in accordance with the provisions of this Article.

(2) ~~"Certified substance abuse counselor" means any~~ Certified substance abuse counselor. -- A person certified by the Board to practice as a substance abuse ~~counseling~~ counselor in accordance with the provisions of this Article.

~~(3) "Substance abuse counseling" means the assessment, evaluation, or provision of counseling to persons suffering from substance abuse or dependency, alcohol abuse or dependency, or drug abuse or dependency.~~

(4) ~~"Certified substance abuse prevention consultant" means any~~ Certified substance abuse prevention consultant. -- A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.

(4a) Credentialing body. -- A board that licenses, certifies, or regulates a profession or practice.

(4b) Deemed status. -- Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a substance abuse specialist may apply individually for certification as a certified clinical addictions specialist.

(4c) Human services field. -- An area of study that focuses on the biological, psychological, and social aspects of human beings.

(4d) Intern. -- A person who successfully completes 300 hours of Board approved supervised practical training and a written examination in pursuit of certification as a substance abuse counselor.

(5) ~~"Prevention" means the~~ Prevention. -- The reduction, delay, or avoidance of alcohol and of other drug use behavior. 'Prevention'

includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.

(6) Professional discipline. -- A field of study characterized by the technical, educational, and ethical standards of a profession.

(7) Substance abuse counseling. -- The assessment, evaluation, and provision of counseling to persons suffering from substance, drug, or alcohol abuse or dependency.

(8) Substance abuse professional. -- A certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director."

Section 3. G.S. 90-113.32 reads as rewritten:

"**§ 90-113.32. ~~Board.~~ Board; composition; voting.**

(a) The Board is created as the certifying authority for substance abuse ~~counselors~~ counselors, ~~and~~ substance abuse prevention ~~consultants~~ consultants, clinical supervisors, clinical addictions specialists, and residential facility directors in North Carolina.

(b) Until the full Board is elected or appointed pursuant to subsection (c) of this section, the Board shall consist of 16 members with one member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The remaining 14 shall be those members of the current North Carolina Substance Abuse ~~Professionals~~ Professional Certification Board, Inc., who have terms that are unexpired as of the effective date of this Article. The initial Board shall appoint an initial Nominating and Elections Committee to fill immediate vacancies on the Board, using the process established in subsection (d) of this section. The election and appointment process of the initial Board shall result in a Board of 19 members by April 1, 1995. As these initial members' terms expire, their successors shall be appointed as described in subsection (c) of this section, until the permanent Board is established, as described in subsection (c) of this section. Time spent as an initial member counts in determining the limitation on consecutive terms prescribed in subsection (e) of this section.

(c) After the initial Board members' terms expire, the Board shall consist of ~~19~~ the following members, all of whom shall reside in North Carolina, appointed or elected as follows:

(1) Eleven professionals certified pursuant to this Article and elected by the certified professionals, at least two of whom shall serve each of the four Division of Mental Health, Developmental Disabilities, and Substance Abuse Services regions of the ~~State;~~ State. Three members shall serve as members at large.

(2) Three members at large chosen from laypersons or other professional disciplines who have shown a special interest in the field of substance abuse, nominated by the Nominations and Elections Committee established by subsection (d) of this section and elected by the ~~Board;~~ Board.

(3) Two members from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Human Resources, appointed by the Chief of Substance Abuse Services Section, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Human Resources, at least one of whom is from the Substance Abuse Services ~~Section;~~ Section.

(4) One member of the public at large appointed by the ~~Governor; and~~ Governor.

(5) One member of the public at large appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and one member of the public at large appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(6) One member shall represent each of the professional disciplines granted deemed status under G.S. 90-113.41A. The member may be appointed by the professional discipline on or before a date set by the Board. If the professional discipline has at least one association in the State, the member shall be chosen from a list of nominees submitted to the association. The members appointed or elected under this subdivision shall be certified as substance abuse specialists by the professional discipline that the members represent.

No member of the General Assembly shall serve on the Board.

(c1) Every member of the Board shall have the right to vote on all matters before the Board, except for the President who shall vote only in case of a tie or when another member of the Board abstains on the question of whether the professional discipline the member represents shall retain its deemed status.

(d) The Board shall appoint five professionals from the field of substance abuse counseling and substance abuse prevention consulting to serve on the Nominating and Elections Committee. Of these five, at least three shall not be members of the Board. The Board shall appoint a member of the Nominating and Elections Committee to serve as chair. The Committee's purpose is to accept nominations from professionals certified by the Board to fill vacancies on the Board in membership categories prescribed by subdivisions (1) and (2) of subsection (c) of this section and to conduct the election of Board members. The Committee shall solicit nominations from all professionals it has certified under this Article ~~whenever such a vacancy occurs and~~ when elected members' terms are due to expire. The certified

professionals shall submit to the Committee all nominations ~~within 90 days~~ beginning 90 days and ending 14 days before the election of new Board members. The Committee shall furnish all certified professionals with a ballot containing all the nominees for each elected Board member vacancy. In soliciting and making nominations for this process, the Committee shall give consideration to factors that promote representation on the Board by professionals certified by the Board. The Committee shall serve for a two-year term, its successors to be appointed for the same term by the Board.

(e) Members of the Board shall serve for three-year terms. No Board member shall serve for more than two consecutive terms, but a person who has been a member for two consecutive terms may be reappointed after being off the Board for a period of at least one year. When a vacancy occurs in an unexpired term, the Board ~~shall~~ shall, as soon as practicable, appoint temporary members to serve until the next membership election. Time spent as a temporary member does not count in determining the limitation on consecutive terms.

(f) If a member becomes ineligible to serve on the Board for any reason, except when the member has committed an ethical violation that results in the suspension or revocation of the member's professional credentials, the member may fulfill the remainder of the member's term on the Board."

Section 4. G.S. 90-113.33 reads as rewritten:

"**§ 90-113.33. Board; powers and duties.**

The Board shall:

(1) Examine and determine the qualifications and fitness of applicants for certification to practice in this ~~State as substance abuse counselors and as substance abuse prevention consultants;~~ State.

(1a) Determine the qualifications and fitness of organizations applying for deemed status.

(2) Issue, renew, deny, suspend, or revoke certification to practice in this State or reprimand or otherwise discipline ~~substance abuse counselors and substance abuse prevention consultants~~ certificate holders in this ~~State;~~ State. However, disciplinary actions involving a clinical addictions specialist whose certification is achieved through deemed status shall be initially heard by the specialist's credentialing body. The specialist may appeal the body's decision to the Board. The Board shall, however, have the authority to hear the initial disciplinary action involving a clinical addictions specialist.

(3) Deal with issues concerning ~~reciprocity;~~ reciprocity.

(4) Conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining ~~exist;~~ exists.

(5) Employ the professional and clerical personnel necessary to carry out the provisions of this Article. The Board may purchase or rent necessary office space, equipment, and ~~supplies;~~ supplies.

(6) Conduct administrative hearings in accordance with Chapter 150B of the General Statutes when a 'contested case', as defined in Chapter 150B, ~~arises;~~ arises.

(7) Appoint from its own membership one or more members to act as representatives of the Board at any meeting in which it considers this representation is ~~desirable;~~ desirable.

(8) Establish fees for applications for examination, certificates of certification and renewal, and other services provided by the ~~Board; and~~ Board.

(9) Adopt any rules necessary to carry out the purpose of this Article and its duties and responsibilities pursuant to this Article.

The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective. When the Board exercises its authority under this Article to discipline a person, it may, as part of the decision imposing the discipline, charge the costs of investigations and the hearing to the person disciplined."

Section 5. G.S. 90-113.34 reads as rewritten:

"§ 90-113.34. Records to be kept; copies of records.

The Board shall obtain documentation of all proceedings under this Article and a record of all persons certified under it. The record shall show the name, last known place of business, last known place of residence, and date and number of the certificate of certification as a certified substance abuse ~~counselor or~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director for every living certified person. Any interested person in the State is entitled to obtain a copy of that record on application to the Board and upon payment of a reasonable charge that is based on the costs involved in providing the copy. The Board shall keep a hard copy of all records."

Section 6. G.S. 90-113.37 reads as rewritten:

"§ 90-113.37. Renewal of certification; lapse; revival.

(a) Every person certified pursuant to this Article who desires to maintain certification status shall apply to the Board for a renewal of certification every other year and pay to the secretary-treasurer the prescribed fee. Renewal of certification is subject to completion of no more than 60 hours of those continuing education requirements established by the Board. A clinical supervisor shall also complete 15 hours of substance abuse clinical supervision or training prior to the certificate being renewed. Certification that is not renewed automatically lapses, unless the Board provides for the late renewal of certification upon the payment of a late fee. No late renewal shall be granted more than five years after a certification expires. A suspended certification is subject to this section's renewal requirements and may be renewed as provided in this section. This renewal does not entitle the certified person to engage in the certified activity or in any other conduct or activity in violation of the order or judgment by which the certification was suspended, until the certification

is reinstated. If a certification revoked on disciplinary grounds is reinstated and requires renewal, the certified person shall pay the renewal fee and any applicable late fee.

(b) The Board shall establish the manner in which lapsed certification may be revived or extended."

Section 7. G.S. 90-113.38 reads as rewritten:

"**§ 90-113.38. Maximums for certain fees.**

(a) The ~~combined fees~~ fee to obtain a certificate of certification as a substance abuse counselor, substance abuse prevention consultant, clinical supervisor, or residential facility director may not exceed ~~three hundred dollars ($300.00).~~ three hundred twenty-five dollars ($325.00). The fee to renew a certificate may not exceed one hundred dollars ($100.00).

(b) The fee to obtain a certificate of certification for a clinical addictions specialist pursuant to G.S. 90-113.41A may not exceed one hundred dollars ($100.00). The fee to renew a certificate may not exceed fifty dollars ($50.00). The fee to obtain a certificate of certification for a clinical addictions specialist under G.S. 90-113.40 may not exceed three hundred twenty-five dollars ($325.00). The fee to renew the certificate may not exceed one hundred dollars ($100.00).

(c) There shall be a reexamination fee of one hundred dollars ($100.00) which shall be paid for each reexamination in addition to the fees required under subsection (a) of this section."

Section 8. G.S. 90-113.39 reads as rewritten:

"**§ 90-113.39. Standards for certification.**

The Board shall establish standards for certification of substance abuse professionals. The certification standards of the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse and ~~of the National Association of Alcoholism and Drug Abuse Counselors~~ the standards adopted by professional disciplines granted deemed status may be used as guidelines for the Board's standards. The Board shall publish these required standards separately from its rules so as to provide easy access to the standards."

Section 9. G.S. 90-113.40 reads as rewritten:

"**§ 90-113.40. Requirements for certification.**

(a) The Board shall issue a certificate certifying an applicant as a ~~"Certified Substance Abuse Counselor"~~ 'Certified Substance Abuse Counselor' or as a ~~"Certified Substance Abuse Prevention Consultant"~~ 'Certified Substance Abuse Prevention Consultant' if:

(1) The applicant is of good moral ~~character;~~ character.

(2) The applicant is not and has not engaged in any practice or conduct that would be grounds for disciplinary action under ~~G.S. 90-113.44;~~ G.S. 90-113.44.

(3) The applicant is qualified for certification pursuant to the requirements of this Article and any rules adopted pursuant to ~~it;~~ it.

(4) The applicant has, at a minimum, a high school diploma or a high school equivalency ~~certificate;~~ certificate.

(5) The applicant has signed a form attesting to the intention to adhere fully to the ethical standards adopted by the ~~Board;~~ Board.

(6) The applicant has completed 270 hours of Board-approved ~~education;~~ education. The Board may prescribe that a certain number of hours be in a course of study for substance abuse counseling and that a certain number of hours be in a course of study for substance abuse prevention consulting.

(7) The applicant has documented completion of a minimum of 300 hours of Supervised Practical Training and has provided a Board-approved supervision contract between the applicant and an approved ~~supervisor;~~ supervisor.

(8) The applicant for substance abuse counselor has completed either a total of ~~three years~~ 6,000 hours of supervised experience in the field, whether paid or volunteer, or, if a graduate of a Board-approved master's degree program, a total of ~~18 months~~ 3,000 hours of supervised experience in the field, whether paid or ~~volunteer; and~~ volunteer. The applicant for substance abuse prevention consultant has completed a total of 10,000 hours supervised experience in the field, whether paid or volunteer, or 4,000 hours if the applicant has at least a bachelors degree in a human services field.

(9) The applicant has successfully completed a written examination and an oral examination promulgated and administered by the Board.

(b) The Board shall issue a certificate certifying an individual as a 'Certified Clinical Supervisor' if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section, the applicant:

(1) Has been certified as a substance abuse counselor or a clinical addictions specialist.

(2) Prior to June 30, 1998, the applicant presents proof that the applicant has 12,000 hours experience in alcohol and drug abuse counseling and a bachelors degree or 8,000 hours experience in alcohol and drug abuse counseling and a minimum of a master's degree. After June 30, 1998, the applicant shall present proof that the applicant has a minimum of a master's degree.

(3) Has 6,000 hours experience as a substance abuse clinical supervisor if the applicant has a bachelors degree or 4,000 hours experience if the applicant has a master's degree.

(4) Has 30 hours of substance abuse clinical supervision specific education or training. These hours shall be reflective of the 12 core functions in the applicant's clinical application and practice

and may also be counted toward the applicant's recertification as a substance abuse counselor.

(5) Submits a letter of reference from a professional who can attest to the applicant's supervisory competence and two letters of reference from either counselors who have been supervised by the applicant or professionals who can attest to the applicant's competence.

(6) Successfully completes a written examination administered by the Board.

(c) The Board shall issue a certificate certifying an applicant as a 'Certified Clinical Addictions Specialist' if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section, the applicant meets one of the following criteria:

(1) Criteria A. -- The applicant:

a. Has a minimum or a master's degree with a clinical application in a human services field.

b. Has two years postgraduate supervised substance abuse counseling experience.

c. Submits three letters of reference from certified clinical addictions specialists or certified substance abuse professionals.

d. Has achieved a combined score set by the Board on a master's level written and oral examination administered by the Board.

e. Has attained 180 hours of substance abuse specific training as described in G.S. 90-113.41A.

(2) Criteria B. -- The applicant:

a. Has a minimum of a master's degree with a clinical application in a human services field.

b. Has been certified as a substance abuse counselor.

c. Has one year of postgraduate supervised substance abuse counseling experience.

d. Has achieved a passing score on a master's level written examination administered by the Board.

e. Submits three letters of reference from certified clinical addictions specialists or certified substance abuse professionals.

(3) Criteria C. -- The applicant:

a. Has a minimum of a master's degree in a human services field with a substance abuse specialty that includes 180 hours of substance abuse specific education and training pursuant to G.S. 113.41A.

b. Has one year of postgraduate supervised substance abuse counseling experience.

c. Has achieved a passing score on an oral examination administered by the Board.

d. Submits three letters of reference from certified clinical addictions specialists or certified substance abuse professionals.

(4) Criteria D. -- The applicant has a substance abuse certification from a professional discipline that has been granted deemed status by the Board.

(d) The Board shall issue a certificate certifying an applicant as a 'Certified Residential Facility Director' if, in addition to meeting the requirements of subdivisions (a)(1) through (5) of this section, the applicant:

(1) Has been certified as a substance abuse counselor.

(2) Has 50 hours of Board approved academic or didactic management specific training or a combination thereof.

(3) Submits letters of reference from the applicant's current supervisor and a colleague or coworker.

(e) The Board shall publish from time to time information in order to provide specifics for potential applicants of an acceptable educational curriculum and the terms of acceptable supervised fieldwork experience."

Section 10. G.S. 90-113.41 reads as rewritten:

"**§ 90-113.41. Examination.**

(a) Except for those individuals applying for certification under G.S. 90-113.41A, ~~Applicants~~ applicants for certification under this Article shall file an application at least 60 days prior to the date of examination and upon the forms and in the manner prescribed by the Board. The application shall be accompanied by the appropriate fee. No portion of this fee is refundable. Applicants who fail an examination may apply for reexamination upon the payment of another examination fee.

(b) Each applicant for certification under this Article shall be examined in an examination that is consistent with the examination requirements of the International Certification Reciprocity Consortium/Alcohol and Other Drug ~~Abuse.~~ Abuse and the standards adopted by professional disciplines granted deemed status.

(c) Applicants for certification shall be examined at a time and place and under the supervision that the Board determines. Examinations shall be given in this State at least twice each year.

(d) Applicants may obtain their examination scores and may review their examination papers in accordance with rules the Board adopts."

Section 11. Article 5C of Chapter 90 of the General Statutes is amended to add a new section to read:

"**§ 90-113.41A. Deemed status.**

(a) To be granted deemed status by the Board, a credentialing body of a professional discipline or its designee shall demonstrate that its substance abuse certification program substantially meets the following:

(1) Each person to whom the credentialing body awards credentials following the effective date of this act meets and maintains

minimum requirements in substance abuse specific content areas. Each person also has a minimum of a master's degree with a clinical application in a human services field.

(2) The body requires 180 hours, or the equivalent thereof, of substance abuse specific education and training that covers the following content areas:

a. Basic addiction and cross addiction Physiology and Pharmacology of Psychoactive drugs that are abused.
b. Screening, assessment, and intake of clients.
c. Individual, group, and family counseling.
d. Treatment, planning, reporting, and record keeping.
e. Crisis intervention.
f. Case management and treatment resources.
g. Ethics, legal issues, and confidentiality.
h. Psychological, emotional, personality, and developmental issues.
i. Coexisting physical and mental disabilities.
j. Special population issues, including age, gender, race, ethnicity, and health status.
k. Traditions and philosophies of recovery treatment models and support groups.

(3) The program requires one year or its equivalent of post-degree supervised clinical substance abuse practice. At least fifty percent (50%) of the practice shall consist of direct substance abuse clinical care.

(b) The professional discipline seeking deemed status shall require its members to adhere to a code of ethical conduct and shall enforce that code with disciplinary action.

(c) The Board may grant deemed status to any professional discipline that substantially meets the standards in this section. Once such status has been granted, an individual within the professional discipline may apply to the Board for certification as a certified clinical addictions specialist.

(d) The Standards and Credentialing Committee of the Board shall review the standards of each professional discipline every third year from the date it was granted deemed status to determine if the discipline continues to substantially meet the requirements of this section. If the Committee finds that a professional discipline no longer meets the requirements of this section, it shall report its findings to the Board at the Board's next regularly scheduled meeting. The deemed status standing of a professional discipline's credential may be discontinued by a two-thirds vote of the Board."

Section 12. G.S. 90-113.42 reads as rewritten:

"**§ 90-113.42. Exemptions.**

It is not the intent of this Article to regulate members of other regulated professions who provide substance abuse services or consultation in the normal

course of the practice of their profession. Accordingly, this Article does not apply to any person registered, certified, or licensed by the State to practice any other occupation or profession while rendering substance abuse services or consultation in the performance of the occupation or profession for which ~~he~~ the person is registered, certified, or licensed. Only individuals certified under this Article may use the title ~~"certified substance abuse counselor" or "certified substance abuse prevention consultant"~~ certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director."

Section 13. G.S. 90-113.43 reads as rewritten:

"**§ 90-113.43. Illegal practice; misdemeanor penalty.**

Except as otherwise authorized in this Article, no person shall:

(1) Practice, attempt to practice, or supervise while holding out to be a certified substance abuse ~~counselor or a~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director without first having obtained a certificate of certification from the ~~Board;~~ Board.

(2) Use in connection with any name any letters, words, numerical codes, or insignia indicating or implying that this person is a certified substance abuse ~~counselor or a~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director unless this person is certified pursuant to this ~~Article;~~ Article.

(3) Practice or attempt to practice as a certified substance abuse ~~counselor or~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director with a revoked, lapsed, or suspended ~~certification;~~ certification.

(4) Aid, abet, or assist any uncertified person to practice as a certified substance abuse ~~counselor or~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director in violation of this ~~Article;~~ Article.

(5) Knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a certified substance abuse ~~counselor or a~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist, or certified residential facility director unless that person is ~~so~~ certified under this ~~Article; or~~ Article.

~~(6) Otherwise violate any of the provisions of this Article or any of the rules adopted pursuant to it.~~

(7) Practice, supervise, or attempt to practice or supervise or knowingly serve in a position required by State law or rule or federal law or regulation to be filled by a designated substance abuse intern without being designated as such by the Board.

A person who engages in any of the illegal practices enumerated by this section is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense."

Section 14. G.S. 90-113.44 reads as rewritten:

"**§ 90-113.44. Grounds for disciplinary action.**

Grounds for disciplinary action include:

(1) The employment of fraud, deceit, or misrepresentation in obtaining or attempting to obtain certification or renewal of ~~certification;~~ certification.

(2) The use of drugs or alcoholic beverages to the extent that professional competency is affected, until proof of rehabilitation can be ~~established;~~ established.

(3) Conviction of an offense under any municipal, State, or federal narcotic or controlled substance law, until proof of rehabilitation can be ~~established;~~ established.

(4) Conviction of a felony or other public offense involving moral turpitude, until proof of rehabilitation can be ~~established;~~ established.

(5) An adjudication of insanity or incompetency, until proof of recovery from this condition can be ~~established;~~ established.

(6) Engaging in any act or practice violative of any of the provisions of this Article or any of the rules adopted pursuant to it, or aiding, abetting, or assisting any other person in such a ~~violation;~~ violation.

(7) The commission of an act of malpractice, gross negligence, or incompetence in the practice of substance abuse ~~counseling or in~~ counseling, substance abuse prevention ~~consulting;~~ consulting, clinical supervising, or in serving as a clinical addictions specialist or residential facility director.

(8) Practicing as a certified substance abuse ~~counselor or as a~~ counselor, certified substance abuse prevention ~~consultant~~ consultant, certified clinical supervisor, certified clinical addictions specialist or certified residential facility director without a valid ~~certificate; and~~ certificate.

(9) Engaging in conduct that could result in harm or injury to the public."

Section 15. G.S. 90-113.46 reads as rewritten:

"**§ 90-113.46. Application of requirements of Article.**

All persons certified by the North Carolina Substance Abuse ~~Professionals~~ Professional Certification Board, Inc., as of July 1, 1994, shall be certified by the

Board pursuant to this Article. All these persons are subject to all the other requirements of this Article and of the rules adopted pursuant to it."

Section 16. Article 5C of Chapter 90 of the General Statutes is amended by adding the following new section:

"**§ 90-113.47. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursements to persons certified under this Article."

Section 17. Notwithstanding G.S. 90-113.40(c), as enacted by Section 9 of this act, the North Carolina Substance Abuse Professional Certification Board (Board) may certify a person as a 'Clinical Addictions Specialist' during a limited period of one year after the effective date of this act upon the submission of proof of one of the following to the Board:

(1) Certification as a substance abuse counselor holding a master's degree with a clinical application in a human services field; the equivalent of two years of full-time post-graduate supervised substance abuse experience; and three letters of reference from certified substance abuse professionals who have master's degrees.

(2) Certification as a substance abuse counselor with a bachelors degree in a human services field; the equivalent of five years of full-time, post-graduate, supervised substance abuse experience; a passing score on a master's level written examination; and submission of three letters of reference from certified substance abuse professionals who have master's degrees.

(3) Certification as a clinical supervisor; a master's degree with a clinical application in a human services field; and three letters of reference from certified substance abuse professionals who have master's degrees.

(4) Certification as a substance abuse counselor; a master's degree with a clinical application in a human services field with a substance abuse specialty; and three letters of reference from certified substance abuse professionals who have master's degrees.

(5) Certification before July 1, 1994, as an alcohol counselor, a drug and alcohol counselor, or a substance abuse counselor; the equivalent of 10 years of documented full-time substance abuse work experience; and three letters of reference from certified substance abuse professionals who have master's degrees.

(6) Certification, licensure, or membership in good standing with a professional discipline that has been granted deemed status under G.S. 90-113.41A, as enacted by Section 11 of this act.

Section 18. Notwithstanding G.S. 90-113.40(c), as enacted by Section 9 of this act, the Board may certify an applicant as a "Clinical Addictions Specialist" during a limited period of three years beginning October 1, 1998, if the applicant completes and submits proof to the Board that the applicant: (i) has been certified as a substance abuse counselor; (ii) has the equivalent of 10 years of supervised, full-

time, substance abuse counseling experience; (iii) has passed a master's level oral and written examination and; (iv) submits three letters of reference from certified substance abuse professionals who hold master's degrees.

Section 19. This act becomes effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 712 (First Edition)

SHORT TITLE: Substance Abuse Specialists

SPONSOR(S): Senator Reeves

DRAFT

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Board Receipts	$20,000	$20,000	$30,000	$30,000	$40,000
EXPENDITURES					
Board Expenses	NA	NA	NA	NA	NA

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Substance Abuse Professional Certification Board

EFFECTIVE DATE: This act is effective on October 1, 1997.

BILL SUMMARY: The bill adds clinical addictions specialist, clinical supervisor, and residential facility director to the list of job types the N. C. Substance Abuse Professional Certification Board certifies. The maximum fee for certification is increased from $300 to $325. The bill enables the professions of psychiatry, psychology, social work, licensed professional counselors, certified rehabilitation counselors and nurses to be certified by the Board under a "deemed status" provision. The fee for deemed status certification is $100 initially and $50 every two years.

ASSUMPTIONS AND METHODOLOGY: There are two fee changes in SB 712. The first is in Section 7, part(a) where the maximum fee to obtain a certificate of certification is increased from $300 to $325. The Executive Director of the Board, Jim Scarborough, explained that the increase in the certification fee is actually a transfer of a $25 fee for testing materials to the certification fee. There is no increase in revenue from this action. The second change is in section 7, part (b),where professionals certified by the Board under "deemed status" are charged an

initial $100 fee and a $50 renewal fee every two years. Mr. Scarborough estimates there will be 1,000 professionals over the next five years to apply for certification. This fiscal note assumes that 200 professionals will apply each year. The revenue from this fee is calculated as follows:

	1997-98	1998-99	1999-00	2000-01	2001-02
Year 1	$ 20,000		$10,000		$10,000
Year 2		$ 20,000		$10,000	
Year 3			$20,000		$10,000
Year 4				$20,000	
Year 5					$20,000
Total Revenue	$ 20,000	$ 20,000	$30,000	$30,000	$40,000
	200 initial	200 initial	200 initial 200 renewal	200 initial 200 renewal	200 initial 400 renewal

NOTE: The Board's cash balance as of June 30, 1996 was $31,258.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington
DATE: May 28, 1997

DRAFT

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

Assessment Report
for

Substance Abuse Specialists

Senate Bill 712

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

May 19, 1997

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensing of substance abuse professionals. This report constitutes both the preliminary and final assessment report.

W. Frank Mitchell

Representative Frank Mitchell, Chairman

Linwood Jones

Prepared by:
Linwood Jones, Counsel

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 516

Short Title: Lead-Based Paint Mgmt/AB. (Public)

Sponsors: Senators Ballance; Jordan, Kinnaird, Lee, Odom, and Winner.

Referred to: Finance.

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A LEAD-BASED PAINT HAZARD MANAGEMENT PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 130A of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 19A.

"Lead-Based Paint Hazard Management Program.

"**§ 130A-453. Definitions.**

As used in this Article:

(1) 'Abatement' means any set of measures designed to identify lead-based paint or lead-based paint hazards or eliminate lead-based paint hazards; it does not include measures designed to identify or eliminate lead-based paint and lead-based paint hazards on bridges, water towers, superstructures, and industrial structures.

(2) 'Elevated blood lead level' means a level established by the Commission pursuant to G.S. 130A-131.5.

(3) 'Inspection' means an investigation to determine the presence of lead-based paint.

(4) 'Lead-based paint' means paint or other surface coatings that contain lead in excess of a level to be established by the Commission.

(5) 'Lead-based paint hazard' means any condition that may cause adverse human health effects as a result of exposure to lead from

lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint.

(6) 'Person' has the same meaning as in G.S. 130A-444.

(7) 'Risk assessment' means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards.

"§ 130A-454. Certification of persons performing lead abatement; accreditation of training courses and training providers.

(a) No person shall commence or continue to perform abatement without first obtaining certification from the Department. Persons who perform abatement within a residential dwelling that they own and in which they reside are exempt from the above certification requirement. The Commission shall adopt rules governing certification including, but not limited to, categories of certification, education, training, examination requirements, and an implementation schedule for certification requirements. Any entity engaged in abatement activities shall only use persons certified by the Department to perform abatements.

(b) No person shall commence or continue to provide certification training in abatement unless the training and training provider have been accredited by the Department. The Commission shall adopt rules governing accreditation of training and training providers including, but not limited to, categories of training course accreditation, standards for training, and an implementation schedule for accreditation requirements.

"§ 130A-454.1. Certification and accreditation fees.

(a) The Department shall establish and collect certification fees and examination fees. These fees shall be used to support the Lead-Based Paint Hazard Management Program in the Department. The annual certification fees shall not exceed one hundred fifty dollars ($150.00) for each certified person for each category of certification. The examination fees shall not exceed one hundred dollars ($100.00) for each examination.

(b) The Department shall establish and collect fees for the accreditation of lead abatement training courses. These fees shall be used to support the Lead-Based Paint Hazard Management Program in the Department. The fees shall not exceed two thousand dollars ($2,000) for initial accreditation for each course and shall not exceed seven hundred fifty dollars ($750.00) for annual renewal of each course.

(c) The fees established under this section shall not apply to any State, local government, or nonprofit lead abatement training program.

(d) The fees established under this section shall not apply to governmental regulatory personnel performing or inspecting abatement solely for the purpose of determining compliance with applicable statutes or regulations.

"§ 130A-454.2. Lead abatement permits.

No person shall engage in lead abatement without a lead abatement permit issued by the Department. The Commission shall adopt rules governing lead abatement permits. No permit under this section shall be required for inspections or risk assessments.

"**§ 130A-454.3. Application fees for lead abatement permits.**

(a) The Department shall establish and collect an application fee for lead abatement permits. These fees shall be used to support the Lead-Based Paint Hazard Management Program in the Department. The application fee shall not exceed two percent (2%) of the contracted price.

(b) The owner of any single-family dwelling, in which the owner will reside after the lead abatement is complete, is not required to pay an application fee under subsection (a) of this section. The owner of any single-family dwelling that is not occupied by the owner is required to pay the application fee under subsection (a) of this section.

"**§ 130A-454.4. Commission to adopt work practice standards.**

The Commission shall adopt standards to ensure that abatements performed under this Article result in the elimination of lead-based paint hazards.

"**§ 130A-454.5. Commission to adopt rules.**

The Commission shall adopt rules to implement this Article."

Section 2. G.S. 130A-22 is amended by adding a new subsection to read:

"(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A of this Chapter or any rules adopted pursuant to Article 19A of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed one thousand dollars ($1,000) for each day the violation continues."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 516
Proposed Committee Substitute S516-PCS8711

Short Title: Lead-Based Paint Mgmt/AB. (Public)

Sponsors:

Referred to:

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STATE-ADMINISTERED LEAD-BASED PAINT HAZARD MANAGEMENT PROGRAM IN LIEU OF HAVING A FEDERALLY ADMINISTERED PROGRAM APPLY IN THIS STATE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 130A of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 19A.

"Lead-Based Paint Hazard Management Program.

"§ 130A-453. Definitions.

The following definitions apply in this Article:

(1) Abatement. -- Identifying lead-based paint, identifying or assessing a lead-based paint hazard, or undertaking any of the following measures to eliminate a lead-based paint hazard:

a. Removing lead-based paint from a surface and repainting the surface.

b. Removing a component, such as a windowsill, painted with lead-based paint and replacing the component.

c. Enclosing a surface painted with lead-based paint with paneling, vinyl siding, or another approved material.

d. Encapsulating a surface painted with lead-based paint with a sealant.

e. Any other measure approved by the Commission.

The term includes an inspection and a risk assessment.

(2) Child-occupied facility. -- Defined in 40 C.F.R. § 745.223.

(3) Inspection. -- An investigation to determine the presence of lead-based paint.

(4) Lead-based paint. -- Paint or another surface coating that contains lead in excess of a level that is safe, as established by the Commission.

(5) Lead-based paint hazard. -- A condition that is likely to cause adverse human health effects as a result of exposure to lead-based paint or to soil or dust that contains lead derived from lead-based paint.

(6) Person. -- Defined in G.S. 130A-444.

(7) Risk assessment. -- An on-site investigation to determine and report the source, severity, and location of a lead-based paint hazard.

(8) Target housing. -- Defined in 40 C.F.R. § 745.223.

"§ 130A-454. Certification of individuals who perform abatements.

(a) Requirement. -- An individual shall not perform or offer to perform an abatement of target housing or a child-occupied facility unless the individual is certified by the Department to perform the activity. Performance of an abatement encompasses a range of activities. To ensure proper performance of all aspects of an abatement, the certification requirement imposed on an individual applies to each category of abatement activity.

The categories of individual certification are inspector, risk-assessor, designer, supervisor, worker, and any other category required by federal law. The category of risk-assessor includes the category of inspector. Thus, a person who is certified as a risk-assessor is not required to be certified as an inspector. Otherwise, an individual who performs or offers to perform activities within the scope of more than one category must be certified in each category.

(b) Exemption. -- The certification requirement imposed by this section does not apply to an individual who performs an abatement of a residential dwelling the person owns and occupies as a residence.

"§ 130A-454.1. Certification and other requirements of firms that perform abatements.

A firm or other entity shall not perform or offer to perform an abatement of target housing or a child-occupied facility unless the entity is certified by the Department as a firm that is qualified to perform the activity. An entity that performs an abatement of target housing or a child-occupied facility shall not use an individual to perform the abatement unless the individual is certified by the Department to perform the activity.

"§ 130A-454.2. Qualifications for certification of individuals and firms.

To be certified under this Article, a person must meet the qualification requirements set by the Commission. Qualification requirements include education,

training, experience, the successful completion of an examination, and payment of any applicable fee.

"§ 130A-454.3. Renewal of certification.

A certification of an individual or a firm issued under this Article expires on the last day of the 12th month after the certification is issued. A certification may be renewed by paying the renewal fee and meeting any standards for renewal, such as refresher training, established by the Commission.

"§ 130A-454.4. Accreditation of training courses and training providers.

Completion of a training course on abatement does not satisfy a training requirement that is a condition for certification under this Article unless both the course provider and the course have been accredited by the Department. The Commission shall establish the procedure and standards for a course provider and a course to be accredited.

"§ 130A-454.5. Certification and accreditation fee schedule.

(a) The Commission shall establish fees for the items listed in the table below. A fee for an item may not exceed the maximum amount set in the table. The fees for examination and certification apply to each category in which a person is examined for certification or is certified.

Item	Maximum Fee
Examination for certification	$75
Certification as worker	50
Certification in any category other than worker	150
Course provider accreditation	150
Initial course accreditation	2,000
Renewal course accreditation	750.

(b) Use. -- The fees imposed under this section are departmental receipts and shall be used by the Department to administer this Article.

(c) Exemptions. -- The examination and certification fees imposed under this section do not apply to governmental regulatory personnel who perform abatements solely for the purpose of determining compliance with applicable statutes or rules. The course provider and course accreditation fees imposed under this section do not apply to the State, a unit of local government, or a nonprofit entity or a course offered by one of these persons.

"§ 130A-454.6. Abatement permits.

(a) Requirement. -- No person shall conduct an abatement of target housing or a child-occupied facility unless the person has obtained a permit for the abatement from the Department. The Commission shall establish the procedure for obtaining a permit. The permit requirement does not apply to an inspection or a risk assessment.

(b) Permit Fee. -- An applicant for an abatement permit must pay an application fee to the Department. The fee is two percent (2%) of the contracted price for the corrective action to be performed in the abatement, not to exceed five hundred dollars ($500.00). The fee imposed under this section is a departmental receipt and shall be used by the Department to administer this Article.

(c) Homeowner. -- An individual who owns a single-family dwelling, conducts an abatement on the dwelling, and will reside in the dwelling after the abatement is completed is required to obtain a permit to conduct the abatement but is not required to pay the permit fee for the permit.

"**§ 130A-454.7. Standards to ensure elimination of hazards; consumer information.**

(a) Standards. -- The Commission shall establish standards to ensure that abatements performed under this Article result in the elimination of lead-based paint hazards. An abatement performed under this Article must be performed in accordance with these standards.

(b) Information. -- The Department shall prepare a fact sheet on abatement for distribution to consumers. The sheet shall list the various measures for abatement of a child-occupied facility or target housing and give the relative cost of each measure. A person who is certified under this Article shall give a copy of the sheet to a person for whom the certified person performs an abatement."

"**§ 130A-454.8. Commission to adopt rules.**

The Commission shall adopt rules to implement this Article."

Section 2. G.S. 130A-22 is amended by adding a new subsection to read:

"(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A of this Chapter or any rules adopted pursuant to Article 19A of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed one thousand dollars ($1,000) for each day the violation continues. The penalty authorized by this section does not apply to a person who is not required to be certified under this Article nor to a failure to obtain certification."

Section 3. G.S. 130A-454.8, as enacted by this act, and this section are effective when they become law. The remainder of this act becomes effective July 1, 1998. This act does not affect the interim certification program requirements that apply before July 1, 1998, for individuals who perform lead-based paint activities funded by a grant from the federal government.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 516 (First Edition)

SHORT TITLE: Lead-Based Paint Management /AB

SPONSOR(S): Senator Ballance, et al

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Lead-Based Paint Hazard Management Program					
Accreditation of Courses	$42,500	$50,000	$45,500	$38,000	$38,000
Lead Certification fees	$52,000	$100,250	$147,250	$147,250	$147,250
Lead Examination fees	$20,250	$37,500	$15,000	$15,000	$15,000
Lead Abatement Permits	$13,000	$23,400	$13,000	$13,000	$13,000
Total	$127,750	$211,150	$220,750	$213,250	$213,250
EXPENDITURES					
Lead-Based Paint Hazard Management Program	$127,750	$211,150	$220,750	$213,250	$213,250
POSITIONS:	2	4	4	4	4

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources

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

BILL SUMMARY: The bill creates a Lead-Based Paint Hazard Management Program in the Department of Environment, Health, and Natural Resources (DEHNR). The Department will certify persons to perform lead abatement and will charge a certification fee not to exceed $150 per person plus an examination fee not to exceed $100 per exam. Those institutions or firms providing lead abatement training courses will be accredited by the Department at a cost of $2,000 for the initial accreditation and $750 annual renewal. Lead abatement permits are required

for each lead abatement project (excluding homeowners) at a price equal to 2% of the contracted price of the project. Violation of this statute carries a $1,000 a day administrative penalty.

ASSUMPTIONS AND METHODOLOGY:

Revenue

I. **Accreditation of Training Courses**

The Department estimates that it will accredit 10 lead abatement training courses in each of the first two years of the program, then accredit only 4 each year thereafter. Each program will be charged $2,000 for accreditation review and $750 for annual renewal of their accreditation. In the first year, the Department will also verify the courses and instructors of programs accredited in 26 states such as Maryland, Virginia, Georgia, and Kentucky. The Department will charge $750 for the course verification or the same as a renewal. It is anticipated that some training programs will drop out each year beginning in the year 2000.

FY 1997-98	10 Initial	X $2,000 =	$20,000
	30 Verification	X $750 =	$22,500
			$42,500
FY 1998-99	10 Initial	X $2,000 =	$20,000
	40 Renewals	X $750 =	$30,000
			$50,000
FY 1999-00	4 Initial	X $2,000 =	$8,000
	50 Renewals	X $750 =	$37,500
			$45,500
FY 2000-01	4 Initial	X $2,000 =	$8,000
	40 Renewals	X $750 =	$30,000
			$38,000
FY 2001-02	4 Initial	X $2,000 =	$8,000
	40 Renewals	X $750 =	$30,000
			$38,000

II. **Lead abatement certification**

The Department may charge up to $150 to certify a person to perform lead abatement. The Department has set the following rates for each category of personnel:

worker = $25
supervisor = $150
inspector = $150
risk assessor = $150
designer = $150
firm = $100

Due to rule-making and other startup delays, the program is anticipated to begin in January 1998. Revenue from lead abatement certification for the first fiscal year reflects only 6 months of program operation. Department officials expect certifications to rise until the year 2000 then level off as shown in the chart below.

	1997-98	1998-99	1999-00	2000-01	2001-02
Worker	300	500	800	800	800
Supervisor	75	100	150	150	150
Inspector	150	350	500	500	500
Risk Assessor	40	80	120	120	120
Designer	5	15	25	25	25
Firms	40	60	80	80	80
Total	610	1,105	1,675	1,675	1,675
Annual Fees	$52,000	$100,250	$147,250	$147,250	$147,250

III. **Lead certification exams**

The Department projects the number of exams it will administer as follows (at $75 per exam):

	Exams	Revenues
FY 1997-98	270	$ 20,250
FY 1998-99	500	$ 37,500
FY 1999-00	200	$ 15,000
FY 2000-01	200	$ 15,000
FY 2001-02	200	$ 15,000

IV. **Lead-based paint removal permits**

The fee for lead-based paint removal permits is equal to 2% of the contract price. Half of the permits will be used by homeowners and will be exempt from the charge. The Department believes much of the permit activity in the first two years will be driven by federal HUD housing funds, but the work will decline in 1999 and beyond as the federal dollars end.

	Permits	Revenues
FY 1997-98	500	$ 13,000
FY 1998-99	900	$ 23,400
FY 1999-00	500	$ 13,000
FY 2000-01	500	$ 13,000
FY 2001-02	500	$ 13,000

Expenditures

The Lead-Based Paint Hazard Management Program created by this act will be partially supported with revenues generated from the accreditation, certification, examination and permit fees to be established by the Department. A federal lead grant will be used to offset the remaining program costs.

Program responsibilities and activities include:

- certification of persons performing lead abatement activities to ensure that qualified persons conduct lead hazard reduction activities,
- accreditation of training courses and persons providing training to individuals seeking certification to assure adequacy of course materials and competency of instructors,
- regulatory guidance, oversight and compliance, including the establishment of a lead abatement notification system to facilitate monitoring of abatement activities by the state.

According to the Department, a total of six full-time positions will be required to administer the program with an initial startup cost of $369,192, including $4,500 for a nonrecurring equipment purchase. Since program revenues are expected to be less the first year because of rule-making and other startup delays, the federal grant will be used to fund four positions for the 1997-98 fiscal year. The remaining two positions will be supported with certification and other program receipts during the 1997-98 fiscal year. As program revenues increase, beginning with the 1998-99 fiscal year, federally funded positions will be shifted to certification, accreditation, examination and/or permit receipts. The department expects sufficient federal funds to be available to offset any costs not covered by program fees.

The total estimated budget requirements for the Lead-Based Paint Hazard Management Program are outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
2 Industrial Hygiene Inspectors	102,995	106,379	109,878	113,602	117,567
2 Industrial Hygiene Consultants	117,213	121,080	125,079	129,335	133,866
1 Technical Trainer	53,867	55,640	57,472	59,423	61,500
1 Processing Assistant	26,617	27,463	28,337	29,269	30,260
Total Salaries & Benefits *	300,692	310,561	320,766	331,629	343,192
Positions	6	6	6	6	6
Operating Expenses	68,500	64,000	64,000	64,000	64,000
Total Requirements	**$369,192**	**$374,561**	**$384,766**	**$395,629**	**$407,192**

** Beginning with the 1998-99 fiscal year, salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates used are based on forecasts by Data Resources, Inc.*

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Mona Moon & Richard Bostic
APPROVED BY: Tom Covington
DATE: April 28, 1997

Attachment # 2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5-29-97

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
E. Ann Christian	Atty
Jane E. Albers	NCSAPCB
Lynda Jay	NCSAPCB
J M Bosworth	NCSAPCB
Richard E. Chad	NCABHCP/NCPA
Lynne McDaniel	citizen
Andrea Harris	NCIMED
Linda Shaw	NC Low Income Housing Coalition
[illegible]	NCSAPCB
William A Downey	Carolinas AGC
Marcia L Bauney	NCAEC
DAVE CROTTS	FISCAL RESEARCH

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5-29-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Clegg	Carolinas AGC
Dave Simpson	" "
Stewart Dickerson	Commerce Finance Center
Joe Kennedy	Piedmont Nat. Gas Company
PERRI MORGAN	NFIB
John Rustin	NCFPC
Tena h. ward	DEHNR
Dorothy Hunter	NCCCS
Myrna Miller	NASW-NC
NANCY POMERANZ	NC DOR
[illegible]	NC Assoc of REALTORS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5-29-97

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Bell	Textiles
Lee Walton	SA Certification Board
Leslie Bowman	NCCBI
Kim Smith	NCCM
R. Rogers	DENR
Pat Curran	DENR
Alan Miles	Bailey & Dixon LLP
Doug Baker	DMH/DD/SAS
[illegible]	OSBM
Henry Jones	Attorney - Raleigh
[illegible]	POC

Attachment # 3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, June 02, 1997

SENATOR JOHN KERR,

submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **516** Lead-Based Paint Mgmt/AB.

Draft Number:	PCS8711
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **712** Substance Abuse Specialists.

Draft Number:	PCS4610
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: S.B. 515 and S.B. 712

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 3, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 26 members of the Committee present. Senator David W. Hoyle, Co-Chairman, presiding. Senator Hoyle called the meeting to order and introduced the Pages, they are Victor Ahdieh from Hamlet, N. C., sponsoroed by Senator Conder and Fabyan Saxe from Plano, Texas, sponsored by Senator Rand.

S. B. 915 - Intangibles Tax Remedy

Senator Kerr came to explain the bill, he moved for adoption of a committee substitute to the bill, motion passed. After a time of discussion and questions on the bill, Senator Conder made a motion for a "favorable" report, motion passed. Bill to be re-referred to Senate Appropriations Committee. NOTE: Bill was not reported out of Committee until June 26, 1997.

H. B. 283 - Perquimans School Acquisition

Representative Culpepper came to explain the bill. Senator Soles made a motion for a "favorable " report, motion passed.

H. B. 411 - Currituck Game Comm. Changes

Representative Owens explained the bill. Senator Lee moved for a "favorable" report, motion passed.

H. B. 260 - Increase Conservation Tax Credit

Representative Gray explained the bill. Senator Cooper made a motion for adoption of a committee substitute, motion passed. Senators Foxx and Lee jointly made a motion for a "favorable" report, motion passed. NOTE: Bill was reported out as "unfavorable as to Senate Committee Substitute No. 1, but favorable as to Senate Committee Substitute No. 2.

S. B. 271 - Small Business Capital & Growth Act

Senator Larry Shaw came to explain the bill, he made a motion for adoption of a committee substitute, motion passed. Ms. Perri Morgan with the National Small Business Federation spoke in support of the bill. Senator Wellons moved for a "favorable" report, motion passed with notation that this bill would be re-referred to Senate Appropriations Committee.

S. B. 938 - Construction Worker Training Credit

Senator Jordan came to explain the bill. Senator Lee made a motion for adoption of a committee substitute, motion passed. Mr. William A. Downey with L. A. Downey & Son, Inc., a Durham construction company, spoke in support of the bill. Mr. Dave Simpson with the Carolina Association of General Contractors stated that they supported the bill. It was decided by the Chair that due to other meetings and not being able to finish the discussion on this bill that we would bring this bill back to Committee for discussion later.

Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration Sheet is Attachment # 2
Committee Report dated 6-26-97 for SB 915 is Attachment # 3
Committee Report dated 6-3-97 for HB 283 and 411 is Attachment # 4
Committee Report dated 6-4-97 for SB 271 and HB 260 is Attachment # 5

Attachment #1

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JUNE 3, 1997 - ROOM 544

- SB 915 - Intangibles Tax Remedy - Sen. Kerr
- HB 283 - Perquimans School Acquisition - Rep. Culpepper
- HB 411 - Currituck Game Comm. Changes - Rep. Owens and H. Hunter
- SB 271 - Small Business Capital & Growth Act - Sen. Larry Shaw
- SB 938 - Construction Worker Training Credit - Sen. Jordan
- HB 260 - Conservation Easements/Tax Credit - Rep. Gray

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 915

Short Title: Intangibles Tax Remedy. (Public)

Sponsors: Senators Kerr and Hoyle.

Referred to: Finance.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE SECRETARY OF REVENUE TO MAKE REFUNDS OF THE INTANGIBLES TAX TO TAXPAYERS WHO ARE ENTITLED TO REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. Upon enactment of a law prohibiting the Secretary of Revenue from collecting intangibles tax liability arising from a taxpayer's use of the taxable percentage deductions in former G.S. 105-203 (repealed) for any of the tax years from 1990 through 1994, G.S. 105-267 as it applies to those tax years entitles a taxpayer to a refund for one or more of those tax years to the extent the taxpayer meets all of the following requirements with respect to the applicable tax year:

(1) The taxpayer paid intangibles tax on shares of stock for the tax year.

(2) The taxpayer protested payment of the tax within 30 days of payment and met the other requirements of G.S. 105-267, as it then existed, to establish and preserve the taxpayer's refund claim for the tax year.

(3) The taxpayer's established and preserved refund claim was pending on February 21, 1996, the date the United States Supreme Court held the taxable percentage deduction in former G.S. 105-203 unconstitutional.

Section 2. The Secretary of Revenue shall make these refunds in accordance with G.S. 105-267. The Secretary of Revenue shall draw the amount of

the refunds and the cost of making the refunds from the Savings Reserve Account established in G.S. 143-15.3.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 915
Proposed Senate Finance Committee Substitute
S915-CSLJ-6/2

Short Title: Intangibles Tax Remedy. (Public)

Sponsors:

Referred to: Finance.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE SECRETARY OF REVENUE TO MAKE REFUNDS OF THE INTANGIBLES TAX TO TAXPAYERS WHO ARE ENTITLED TO REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. Because the General Assembly has enacted S.L. 1997-17, prohibiting the Secretary of Revenue from collecting intangibles tax liability arising from a taxpayer's use of the taxable percentage deductions in former G.S. 105-203 (repealed) for any of the tax years from 1990 through 1994, G.S. 105-267 as it applies to those tax years entitles a taxpayer to a refund for one or more of those tax years to the extent the taxpayer meets all of the following requirements with respect to the applicable tax year:

(1) The taxpayer paid intangibles tax on shares of stock for the tax year.

(2) The taxpayer protested payment of the tax within 30 days of payment and met the other requirements of G.S. 105-267, as it then existed, to establish and preserve the taxpayer's refund claim for the tax year.

(3) The taxpayer's established and preserved refund claim was pending on February 21, 1996, the date the United States Supreme Court held the taxable percentage deduction in former G.S. 105-203 unconstitutional.

Section 2. The Secretary of Revenue shall make these refunds in accordance with G.S. 105-267.

Section 3. This act becomes effective July 1, 1997.

EXPLANATION OF SENATE BILL 915

Proposed Committee Substitute

Intangibles Tax Remedy

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: June 3, 1997
Sponsor: Senators Kerr and Hoyle

The proposed committee substitute for Senate Bill 915 provides an intangibles tax refund, with interest, to intangibles taxpayers who made a timely protest. Since the enactment of Senate Bill 388, S.L. 1997-17, the General Assembly is obligated to pay protesters their refunds. The bill does not provide relief to nonprotesters. The Attorney General's office issued an opinion in April that it would be unconstitutional for the General Assembly to refund intangible taxes not filed under protest.

On February 10, 1997, the North Carolina Supreme Court held that the taxable percentage deduction in the North Carolina intangible tax on stock violated the commerce clause by discriminating against out-of-state companies. The deduction reduced a taxpayer's liability for the tax in proportion to the amount of business the corporation did in North Carolina. The court did not order refunds. Instead, it allowed the possibility of curing the past discrimination by the assessment of intangibles tax on those who did not pay in reliance on the unconstitutional taxable percentage deduction. The Secretary of Revenue began preparing to take this action in early March.

However, on April 9, 1997, the General Assembly ratified Senate Bill 388, and the Governor signed it into law, S.L. 1997-17, on April 10, 1997. That legislation directed the Secretary of Revenue to take no action to collect or assess back intangibles tax for tax years 1990 through 1994. This legislation forecloses the possibility of assessments on those who relied on the taxable percentage deduction. Therefore, to cure the past discrimination, the General Assembly must now provide intangibles tax refunds to those intangibles taxpayers who paid tax on shares of stock and who protested the payment of the tax within 30 days of payment.

The issue of refunds to protesters has been addressed recently in the Smith case, another intangibles tax case, in which the group of intangible tax protesters has been certified as a class for purposes of the suit. Within the last two weeks, the superior court judge in that case issued a verbal order to pay the

protesters refunds with simple interest at 8%. A written judgment has not been issued yet in that case. The enactment of this bill will fulfill the General Assembly's obligation to provide for refunds after prohibiting the assessments, may speed the refunds, and may help taxpayers decide whether they would receive any benefit by remaining part of the Smith class. A taxpayer who is part of the class may be required to pay attorneys fees from the refund the taxpayer will otherwise receive.

The bill does not provide relief to nonprotesters. The reason for this is that, because the State has no legal obligation to these taxpayers, any payments to them would be an exclusive emolument prohibited by Article I, Section 32 of the North Carolina Constitution. The exclusive emoluments provision of the State Constitution prohibits the legislature from extending special privileges to a select group of individuals except in consideration of public services. The tax refunds granted by the 1996 General Assembly to federal retirees who did not pay the tax on their federal retirement income under protest were stated to be in consideration of their public service.

SENATE
COMMITTEE SUBSTITUTE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

JUN 26 1997

S

ADOPTED

D

SENATE BILL 915
Proposed Committee Substitute S915-PCS7808

Short Title: Intangibles Tax Remedy. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE SECRETARY OF REVENUE TO MAKE REFUNDS OF THE INTANGIBLES TAX TO TAXPAYERS WHO ARE ENTITLED TO REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. Because the General Assembly has enacted S.L. 1997-17, prohibiting the Secretary of Revenue from collecting intangibles tax liability arising from a taxpayer's use of the taxable percentage deductions in former G.S. 105-203 (repealed) for any of the tax years from 1990 through 1994, G.S. 105-267 as it applies to those tax years entitles a taxpayer to a refund for one or more of those tax years to the extent the taxpayer meets all of the following requirements with respect to the applicable tax year:

(1) The taxpayer paid intangibles tax on shares of stock for the tax year.

(2) The taxpayer protested payment of the tax within 30 days of payment and met the other requirements of G.S. 105-267, as it then existed, to establish and preserve the taxpayer's refund claim for the tax year.

(3) The taxpayer's established and preserved refund claim was pending on February 21, 1996, the date the United States Supreme Court held the taxable percentage deduction in former G.S. 105-203 unconstitutional.

Section 2. The Secretary of Revenue shall make these refunds in accordance with G.S. 105-267.

Section 3. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 283

Short Title: Perquimans School Acquisition. (Local)

Sponsors: Representative Culpepper.

Referred to: Local and Regional Government I, if favorable, Finance.

February 20, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW PERQUIMANS COUNTY TO ACQUIRE PROPERTY FOR USE BY ITS COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 411

Short Title: Currituck Game Comm. Changes. (Local)

Sponsors: Representatives Owens and H. Hunter.

Referred to: Ways and Means, if favorable, Finance.

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW RELATING TO THE GAME COMMISSION OF CURRITUCK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 8 of Chapter 1436 of the 1957 Session Laws, as rewritten by Section 6 of Chapter 622 of the 1981 Session Laws, reads as rewritten:

"Sec. 8. To obtain a license for either a stationary bush blind or a floating bush blind, the applicant shall apply in writing to the clerk to the Game Commission enclosing:

~~(a) For a bush blind, $15.00; and~~

~~(b) For a float blind, $20.00.~~

(1) Twenty-five dollars ($25.00) if the applicant is a resident of North Carolina; or

(2) Two hundred fifty dollars ($250.00) if the applicant is not a resident of North Carolina.

~~Of the amount remitted, the clerk to the Game Commission shall retain one dollar ($1.00) as an issuance fee for each license issued.~~ In addition to the application fee, each application shall be accompanied by a nonrefundable processing fee of ten dollars ($10.00). Applicants shall submit proof of North Carolina residency along with each application.

Applicants who are not residents of North Carolina but who were the holders of licensed blinds for the 1996-97 waterfowl season shall be charged as North Carolina residents for all subsequent renewals of that application. However, this exemption

terminates if the blind license is not renewed during any subsequent annual renewal period and is not transferable to any different blind location.

Float blinds when licensed shall bear the license number or tag, and the same shall be displayed in a prominent or conspicuous place upon the blind."

Section 2. Subsection (b) of Section 10 of Chapter 1436 of the 1957 Session Laws, as amended by Section 7 of Chapter 622 of the 1981 Session Laws and Section 4 of Chapter 764 of the 1983 Session Laws, reads as rewritten:

"(b) Application must be filed on or before August 1 of each year to insure timely consideration. To obtain a license for a point blind, the applicant shall apply in writing to the clerk to the Game Commission enclosing twenty-five dollars ($25.00). ~~Of the amount remitted, the clerk to the Game Commission shall retain two dollars ($2.00) as an issuance fee for each license issued.~~ In addition to the application fee, each application shall be accompanied by a nonrefundable processing fee of ten dollars ($10.00)."

Section 3. Section 18 of Chapter 1436 of the 1957 Session Laws, as rewritten by Section 9 of Chapter 622 of the 1981 Session Laws, reads as rewritten:

"Sec. 18. The Game Commission of Currituck County is empowered to pay the necessary fees of attorneys, surveyors, and accountants; the costs of printing license forms for hunting blind licenses to be furnished to the clerk to the Game Commission; and other necessary expenses of carrying out the duties imposed by this act. Each member shall be paid a per diem of ten dollars ($10.00) and travel expenses of fifteen cents (15¢) per mile while engaged in official business of the Game Commission. the Chairman of the Game Commission shall be paid one thousand dollars ($1,000) per year in addition to per diem and travel for the fulfillment of his duties as chairman, in such installments as the Commission may direct. Each Game Commission member shall be paid five hundred dollars ($500.00) per year in addition to per diem and travel in such installments as the Game Commission may direct. The clerk to the Game Commission shall receive an annual salary of five hundred dollars ($500.00) for the performance of his duties for the Game Commission in addition to his fees for issuing licenses.

~~The Game Commission may accumulate an operating reserve of funds to carry out the necessary duties imposed by this act in an amount deemed necessary by the Game Commission, but not to exceed five thousand dollars ($5,000). At the end of each fiscal year any funds held by the Game Commission in excess of the operating reserve must be paid to the North Carolina Wildlife Commission for deposit in the Wildlife Resources Fund.~~

In addition, the Game Commission may disburse excess funds generated from fees to an organization established as a nonprofit corporation under North Carolina law for the purpose of conservation, habitat enhancement, and waterfowl protection in Currituck County. The board of directors of this corporation shall be appointed by the Currituck County Board of Commissioners and shall include a representative designated by the Wildlife Resources Commission as a nonvoting member.

Prior to the beginning of the Game Commission's fiscal year it shall file a copy of its budget for that year with the North Carolina Wildlife Resources Commission.

Within 30 days following receipt of the audit report made after the close of a fiscal year, the Game Commission shall file a copy of the audit report with the Wildlife Commission."

Section 4. Section 24 of Chapter 1436 of the 1957 Session Laws, as rewritten by Section 5 of Chapter 808 of the 1989 Session Laws, reads as rewritten:

"Sec. 24. (a) ~~The~~ Unless modified by the Game Commission pursuant to subsection (d) of this section, in all areas of Currituck County lying east and north of the line described in subsection (c) of this section, the starting time for waterfowl hunting each day, and the quitting time for waterfowl hunting each day prior to November 1 and after January 31 of the hunting season, shall be as set by the North Carolina Wildlife Resources Commission, or as required by the statewide game law. The quitting time for waterfowl hunting each day ~~after~~ from November 1 through January 31 of the hunting season shall be 4:20 p.m. Eastern Standard Time.

(b) Unless modified by the Game Commission pursuant to subsection (d) of this section, in all areas of Currituck County lying west of the line described in subsection (c) of this section, the starting time for waterfowl hunting each day , and the quitting time for waterfowl hunting each day, shall be as set by the North Carolina Wildlife Resources Commission, or as required by the statewide game law.

(c) The line of demarcation between the waterfowl hunting regions referred to in subsections (a) and (b) of this section is as follows:

Beginning at a point located on the boundary line between the State of North Carolina and the Commonwealth of Virginia and which point marks the center of the Atlantic Intracoastal Waterway (AICW) as established by the United States Army Corps of Engineers and thence following the center of the AICW channel in a southerly direction to the point which marks the intersection with the center of the ferry channel for the Currituck-Knotts Island Ferry; thence running in a southeasterly direction to the northeastern point of Churches Island at a point where the right-of-way of NCSR 1142 (the road from Coinjock to Churches Island) would terminate if extended in a northerly direction to the high water mark of the sound; thence following the center line of NCSR 1142 and the northerly extension thereof in a southerly and westerly direction through Churches Island and continuing to a point where the right-of-way intersects the center of U.S. Highway 158 near the bridge crossing the AICW at Coinjock; thence following the center line of U.S. Highway 158 in a southerly direction to the center of the Currituck Sound and the line marking the boundary between Dare County and Currituck County.

(d) Subject to the approval of the Currituck County Board of Commissioners, the Game Commission may modify the times for waterfowl hunting set forth in this section upon specific findings, after duly advertised public hearing, that the modifications will benefit the waterfowl flyway and habitat within Currituck County and will promote safety and conservation of resources. However, the Game Commission may not modify the times for waterfowl hunting to allow hunting during times when waterfowl hunting is otherwise prohibited by the Wildlife Resources Commission in other areas of the State."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 260*
Committee Substitute Favorable 4/8/97
Senate Finance Committee Substitute Adopted 4/22/97

Short Title: Increase Conservation Tax Credit. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CAP ON THE INCOME TAX CREDIT FOR REAL PROPERTY DONATED FOR CONSERVATION PURPOSES AND TO ENSURE THAT CONSERVATION AND PRESERVATION AGREEMENTS ARE CONSIDERED IN DETERMINING THE APPRAISED VALUE OF LAND AND IMPROVEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.34 reads as rewritten:

"**§ 105-130.34. Credit for certain real property donations.**

(a) Any corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation ~~purposes, shall be~~ purposes is allowed a credit against the ~~taxes~~ tax imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated to and accepted by either the State, ~~local government~~ a local government, or a body that is both organized to receive and administer lands for conservation purposes and ~~is~~ qualified to receive charitable contributions pursuant to G.S. ~~105-130.9; provided, however, that lands~~ 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under ~~such regulations or ordinances shall not be~~ a regulation or ordinance are not eligible

for this credit. The credit allowed under this section may not exceed ~~twenty-five thousand dollars ($25,000).~~ two hundred fifty thousand dollars ($250,000). To support the credit allowed by this section, the taxpayer ~~shall~~ must file with its income tax ~~return~~ return, for the taxable year in which the credit is claimed, a certification by the Department of Environment, Health, and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

(c) Any unused portion of this credit may be carried forward for the next succeeding five years.

(d) ~~The fair market value, or any portion thereof, of a~~ That portion of a qualifying donation that is ~~not eligible for a credit pursuant to this section may be considered as a charitable contribution pursuant to G.S. 105-130.9. That portion of the donation~~ the basis for a credit allowed ~~as a credit pursuant to~~ under this section ~~shall not be~~ is not eligible for deduction as a charitable ~~contribution.~~ contribution under G.S. 105-130.9."

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

"**§ 105-151.12. Credit for certain real property donations.**

(a) A person who makes a qualified donation of ~~interests~~ an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation ~~purposes, shall be~~ purposes is allowed ~~as~~ a credit against the tax imposed by this Division ~~an amount~~ equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and ~~is~~ qualified to receive charitable contributions under the ~~Code; provided, however, that lands~~ Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under ~~such regulations or ordinances~~ a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed ~~twenty-five thousand dollars ($25,000).~~ one hundred thousand dollars ($100,000). To support the credit allowed by this section, the taxpayer ~~shall~~ must file with the income tax return for the taxable year in which the credit is claimed a certification by the Department of Environment, Health, and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth ~~by~~ in this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

Any unused portion of this credit may be carried forward for the next succeeding five years.

(c) In order to claim the credit allowed under this section, the taxpayer must add the fair market value of the donated property interest, up to a maximum of ~~one hundred thousand dollars ($100,000),~~ four hundred thousand dollars ($400,000), to taxable income as provided in G.S. 105-134.6(c).

(d) In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

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

Section 3. G.S. 105-134.6(c)(5) reads as rewritten:

"(5) The fair market value, up to a maximum of ~~one hundred thousand dollars ($100,000),~~ four hundred thousand dollars ($400,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12 and the market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14."

Section 4. G.S. 105-287(a) reads as rewritten:

"(a) In a year in which a general reappraisal or horizontal adjustment of real property in the county is not made, the assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, ~~to:~~ to accomplish any one or more of the following:

(1) Correct a clerical or mathematical ~~error;~~ error.

(2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal ~~adjustment; or~~ adjustment.

(2a) Recognize an increase or decrease in the value of the property resulting from a conservation or preservation agreement subject to Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act.

(3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b)."

Section 5. G.S. 105-317(a) reads as rewritten:

"(a) Whenever any real property is appraised it shall be the duty of the persons making appraisals:

(1) In determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages as to location; zoning; quality of soil; waterpower; water privileges; dedication as a nature preserve; conservation or preservation agreements; mineral, quarry, or other valuable deposits; fertility; adaptability for agricultural, timber-producing, commercial, industrial, or other uses; past income; probable future

income; and any other factors that may affect its value except growing crops of a seasonal or annual nature.

(2) In determining the true value of a building or other improvement, to consider at least its location; type of construction; age; replacement cost; cost; adaptability for residence, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value.

(3) To appraise partially completed buildings in accordance with the degree of completion on January 1."

Section 6. Sections 1 through 3 of this act are effective for taxable years beginning on or after January 1, 1998. The remaining sections of this act become effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 260*
Committee Substitute Favorable 4/8/97
Senate Finance Committee Substitute Adopted 4/22/97
Proposed Senate Finance Committee Substitute #2
H260-CSLJ-6/3

Short Title: Conservation Tax Credit/Fund. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CAP ON THE INCOME TAX CREDIT FOR REAL PROPERTY DONATED FOR CONSERVATION PURPOSES, TO ENSURE THAT CONSERVATION AND PRESERVATION AGREEMENTS ARE CONSIDERED IN DETERMINING THE APPRAISED VALUE OF LAND AND IMPROVEMENTS, AND TO ESTABLISH THE CONSERVATION GRANT FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.34 reads as rewritten:

"**§ 105-130.34. Credit for certain real property donations.**

(a) Any corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation ~~purposes, shall be~~ purposes is allowed a credit against the ~~taxes~~ tax imposed by this Division equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated to and accepted by either the State, ~~local government~~ a local government, or a body that is both organized to receive and

administer lands for conservation purposes and ~~is~~ qualified to receive charitable contributions pursuant to G.S. ~~105-130.9; provided, however, that lands~~ 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under ~~such regulations or ordinances shall not be~~ a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed ~~twenty-five thousand dollars ($25,000).~~ two hundred fifty thousand dollars ($250,000). To support the credit allowed by this section, the taxpayer ~~shall~~ must file with its income tax ~~return~~ return, for the taxable year in which the credit is claimed, a certification by the Department of Environment, Health, and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

(c) Any unused portion of this credit may be carried forward for the next succeeding five years.

(d) ~~The fair market value, or any portion thereof, of a~~ That portion of a qualifying donation that is ~~not eligible for a credit pursuant to this section may be considered as a charitable contribution pursuant to G.S. 105-130.9. That portion of the donation~~ the basis for a credit allowed ~~as a credit pursuant to~~ under this section ~~shall not be~~ is not eligible for deduction as a charitable ~~contribution.~~ contribution under G.S. 105-130.9."

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

"**§ 105-151.12. Credit for certain real property donations.**

(a) A person who makes a qualified donation of ~~interests~~ an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation ~~purposes, shall be~~ purposes is allowed ~~as~~ a credit against the tax imposed by this Division ~~an amount~~ equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and ~~is~~ qualified to receive charitable contributions under the ~~Code; provided,~~

~~however, that lands~~ Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under ~~such regulations or ordinances~~ a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed ~~twenty-five thousand dollars ($25,000).~~ one hundred thousand dollars ($100,000). To support the credit allowed by this section, the taxpayer ~~shall~~ must file with the income tax return for the taxable year in which the credit is claimed a certification by the Department of Environment, Health, and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth ~~by~~ in this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowed, except payments of tax made by or on behalf of the taxpayer.

Any unused portion of this credit may be carried forward for the next succeeding five years.

(c) In order to claim the credit allowed under this section, the taxpayer must add the fair market value of the donated property interest, up to a maximum of ~~one hundred thousand dollars ($100,000),~~ four hundred thousand dollars ($400,000), to taxable income as provided in G.S. 105-134.6(c).

(d) In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

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

Section 3. G.S. 105-134.6(c)(5) reads as rewritten:

"(5) The fair market value, up to a maximum of ~~one hundred thousand dollars ($100,000),~~ four hundred thousand dollars ($400,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12 and the market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14."

Section 4. G.S. 105-287(a) reads as rewritten:

"(a) In a year in which a general reappraisal or horizontal adjustment of real property in the county is not made, the assessor shall increase or decrease the appraised value of real property, as determined under G.S. 105-286, ~~to:~~ to accomplish any one or more of the following:

(1) Correct a clerical or mathematical ~~error;~~ error.

(2) Correct an appraisal error resulting from a misapplication of the schedules, standards, and rules used in the county's most recent general reappraisal or horizontal ~~adjustment; or~~ adjustment.

(2a) Recognize an increase or decrease in the value of the property resulting from a conservation or preservation agreement subject to Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act.

(3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b)."

Section 5. G.S. 105-317(a) reads as rewritten:

"(a) Whenever any real property is appraised it shall be the duty of the persons making appraisals:

(1) In determining the true value of land, to consider as to each tract, parcel, or lot separately listed at least its advantages and disadvantages as to location; zoning; quality of soil; waterpower; water privileges; dedication as a nature preserve; conservation or preservation agreements; mineral, quarry, or other valuable deposits; fertility; adaptability for agricultural, timber-producing, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value except growing crops of a seasonal or annual nature.

(2) In determining the true value of a building or other improvement, to consider at least its location; type of construction; age; replacement cost; cost; adaptability for residence, commercial, industrial, or other uses; past income; probable future income; and any other factors that may affect its value.

(3) To appraise partially completed buildings in accordance with the degree of completion on January 1."

Section 6. Chapter 113A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 16.

"Conservation Easements Program.

"§ 113A-230. Legislative findings; intent.

The General Assembly finds that a statewide network of protected natural areas, riparian buffers, and greenways can best be accomplished through a conservation easements program. The General Assembly further finds that other public conversation and use programs, such as natural area protection, beach access, trail systems, historic landscape protection, and agricultural preservation, can benefit from increased conservation tools. In this Article, the General Assembly therefore intends to extend the ability of the Department of Environment, Health, and Natural Resources to achieve these purposes and to strengthen the capability of private nonprofit land trusts to participate in land and water conservation.

"§ 113A-231. Program to accomplish conservation purposes.

The Department of Environment, Health, and Natural Resources shall develop a nonregulatory program that uses conservation tax credits as a prominent tool to accomplish conservation purposes, including the maintenance of ecological systems.

"§ 113A-232. Conservation Grant Fund.

(a) Fund Created. -- The Conservation Grant Fund is created within the Department of Environment, Health, and Natural Resources. The Fund shall be administered by that Department. The purpose of the Fund is to stimulate the use of conservation easements, to improve the capacity of private nonprofit land trusts to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase citizen participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements.

(b) Fund Sources. -- The Conservation Grant Fund shall consist of any monies appropriated to it by the General Assembly and any monies received from public or private sources. Unexpended monies in the Fund that were appropriated from the General Fund by the General Assembly shall revert at the end of the fiscal year unless the General Assembly otherwise provides. Unexpended

monies in the Fund from other sources shall not revert and shall remain available for expenditure in accordance with this Article.

(c) Eligibility. -- In order for land to be the subject of a grant under this Article, the land must possess or have a high potential to possess ecological value, must be reasonably restorable, and must qualify for tax credits under G.S. 105-130.34. or G.S. 105-151.12. Private nonprofit land trust organizations must be qualified pursuant to G.S. 105-130.34 and G.S. 105-151.12 and must be certified under section 501(c)(3) of the Internal Revenue Code.

(d) Use of Revenue. -- Revenue in the Conservation Fund may be used only for the following purposes:

(1) The administrative costs of the Department in administering the Fund.

(2) Conservation grants made in accordance with this Article.

(3) To establish an endowment account, the interest from which will be used for a purpose described in G.S. 113A-233(a)(3) or (a)(5).

"§ 113A-233. Uses of a grant from the Conservation Grant Fund.

(a) Allowable Uses. -- A grant from the Conservation Grant Fund may be used only to pay for one or more of the following costs:

(1) Reimbursement for total or partial transaction costs for donations from individuals or corporations satisfying either of the following:

a. Insufficient financial ability to pay all costs or insufficient taxable income to allow these costs to be included in the donated value.

b. Insufficient tax burdens to allow these costs to be offset by the value of tax credits under G.S. 105-130.34 or G.S. 105-151.12 or by charitable deductions.

(2) Management support, including initial baseline inventory and planning.

(3) Monitoring compliance with conservation easements. the related use of riparian buffers, natural areas, and greenways, and the presence of ecological integrity.

(4) Education on conservation, including information materials intended for landowners and education for staff and volunteers.

(5) Stewardship of land.

(6) Transaction costs, including legal expenses, closing and title costs, and unusual direct costs, such as overnight travel.

(7) Administrative costs for short-term growth or for building capacity.

(b) Prohibition. -- The Fund shall not be used to pay the purchase price for any interest in land.

"**§ 113A-234. Administration of grants.**

The Secretary of Environment, Health, and Natural Resources shall establish the procedures and criteria for awarding grants from the Conservation Grant Fund. The criteria shall focus grants on those areas, approaches, and techniques that are likely to provide the optimum positive effect on environmental protection. The Secretary shall make the final decision on the award of grants and shall announce the award publicly in a timely manner.

The Secretary may administer the grants under this Article or may contract for selected activities under this Article. If administrative services are contracted, the Department shall establish guidance and criteria for its operation and contract with a statewide nonprofit land trust service organization.

"**§ 113A-235. Conservation easements.**

Ecological systems and appropriate public use of these systems may be protected through conservation easements, including conservation agreements under Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act. The Department of Environment, Health, and Natural Resources shall work cooperatively with State and local agencies and qualified nonprofit organizations to monitor compliance with conservation easements and conservation agreements and to ensure the continued viability of the protected ecosystems."

Section 7. Sections 1 through 3 of this act are effective for taxable years beginning on or after January 1, 1997. The remaining sections of this act become effective July 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 260 (Second Version)
SHORT TITLE: Conservation Easements/Tax Credit
SPONSOR(S): Proposed Committee Substitute

($ Million)
FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
General Fund REVENUES					
Individual	**$1.5 million (loss) a year in additional income tax credits certified**				
Corporation	**$1.7 million (loss) a year in additional income tax credits certified**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue Personal Tax Division
Department of Revenue Corporate Tax Division
Department of Environment, Health, and Natural Resources

EFFECTIVE DATE: For tax years beginning on or after January 1, 1998

BILL SUMMARY:
The proposed act increases the income tax credit for donations of real property made to the State, a unit of local government, or to a body organized to receive land for conservation purposes. The corporate credit under G. S. 105-130.34 is increased from $25,000 to $250,000. The individual credit under G. S. 105-151.12 is increased from $25,000 to $100,000. .
Makes a clarifying change to the property tax statutes under G. S. 105-287(a) and G. S. 105-317(a).

ASSUMPTIONS AND METHODOLOGY:
It is impossible to determine how much real property will be donated in a given year under this act. Donors are motivated to make such gifts for many different reasons. However, it is logical to assume that the greater the tax credit received from the donation, the more real property individuals and corporations are willing to donate. This assumption is evident in the increase in donations and their characteristics when the credit was increased from a $5,000 cap to the current $25,000. (The percentage increase in the cap effective tax year 1989 was 500% or five times the 1983 cap.)

For tax years 1983 through 1988, 37 donations were made by 169 donors. Each donor gave an average of 66 acres for a total acreage of 2,383. The estimated value of this acreage is $5.6 million. For tax years 1989 through 1995, 95 donations were made by 215 donors. Each donor gave an average of 252 acres for a total acreage of 23,714. The estimated value of this acreage is $34.5 million. The cumulative credit for the period 1983 to 1988 was $574,151 and for the period 1989 to1995 was $2,805,488. The percentage increase over this period is 488% or almost five times the cumulative credit for 1983 through 1988. The ratio of the increase in the credit cap to the increase in certified credits is almost 1 to 1; 488% increase in credits to a 500% increase in the cap.

This act raises the credit cap 1000% for corporations and 400% for individuals. If this ratio continues the level of additional certified credit, on average, for the next five years is expected to be $1.7 million a year for corporations and $1.5 million a year for individuals.

Equations shown below:

Corporations

The base data for credits certified to corporations is the seven year average of cumulative credits for the period 1989 to 1995 times 30%, the corporate share of total credits for the period; $841,646. This value times 10 divided by five years equals $1.7 million a year in new credits.

- $2,805,488 * .30 = $841,646
- ($841,646 *10) / 5 = $1.7 million

Individuals

The base data for credits certified to individuals is the seven year average of cumulative credits for the period 1989 to 1995 times 69%, the individual share of total credits for the period; $1,935,787. This value times 4 divided by five years equals $1.5 million a year in new credits.

- $2,805,488 * .69 = $1,935,787
- ($1,935,787 * 4) / 5 = $1.5 million

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: H. Warren Plonk
APPROVED BY:
DATE: April 22, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 271

Short Title: Small Business Capital & Growth Act. (Public)

Sponsors: Senators Shaw of Cumberland; Jenkins and Phillips.

Referred to: Finance.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA CAPITAL ACCESS AUTHORITY, WHICH WILL CREATE 25,000 JOBS FOR NORTH CAROLINA BY PROVIDING LOAN GUARANTEES FOR SMALL AND MEDIUM-SIZED BUSINESSES.

The General Assembly of North Carolina enacts:

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I. CAPITAL ACCESS AUTHORITY AND FUND
II. INVESTMENTS BY STATE TREASURER
III. CONFORMING CHANGES
IV. EFFECTIVE DATE

PART I.

CAPITAL ACCESS AUTHORITY AND FUND

Section 1. This act is the Small Business Capital and Growth Act of 1997.

Section 2. G.S. 53A-35 through G.S. 53A-37 are designated Part 1 of Article 3 of Chapter 53A of the General Statutes, entitled "General Provisions", and the remainder of Article 3 of Chapter 53A of the General Statutes is designated Part 2, entitled "North Carolina Enterprise Corporations".

Section 3. Article 3 of Chapter 53A of the General Statutes, as amended by this act, is further amended by adding a new Part to read:

"Part 3. The North Carolina Capital Access Authority.

"§ 53A-50. Creation of Authority; purpose.

(a) Creation. -- The North Carolina Capital Access Authority is created as a body corporate and politic having the powers and jurisdiction as provided under this Part or any other law. The Authority is a State agency created to perform essential governmental and public functions. The Authority shall be located within the Department of Commerce, but shall exercise all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Commerce and, notwithstanding any other provision of law, shall be subject to the direction and supervision of the Secretary only with respect to the management functions of coordinating and reporting.

(b) Purpose. -- The purpose of The North Carolina Capital Access Authority is to promote, stimulate, develop, and advance economic prosperity and stimulate job creation in rural areas, underdeveloped communities, depressed urban commercial areas, and economically distressed areas of North Carolina through loan guarantees to Qualified North Carolina Businesses. To stimulate development broadly across the State, the Authority shall, to the maximum extent feasible consistent with sound business practices, provide loan guarantees to businesses located throughout the State. The Authority shall support nonspeculative, mainstream businesses as provided in this Part.

"§ 53A-51. Governing body of Authority.

(a) Board of Directors. -- The Authority shall be governed by a Board of Directors. The Board shall consist of nine appointed members and two ex officio members. As the holder of an office, each member of the Board shall take the oath required by Section 7 of Article VI of the North Carolina Constitution before assuming the duties of a Board member. The Governor shall designate a chair and a vice-chair of the Board. The chair shall convene the first meeting of the Board.

(b) Appointed Members. -- Three members shall be appointed by the Governor, one who represents the banking industry, created pursuant to Part 2 of this Article, one who represents small business interests, and one who represents public interests. Three members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one who represents community development corporations, one who represents medium-sized business interests, and one who represents public interests. Three members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, one who owns a minority business as defined in G.S. 143-128, one who represents a nonprofit organization active in infrastructure development under the Community Reinvestment Act, and one who represents public interests.

In making appointments to the Board, the Governor and the General Assembly shall give consideration to the geographical representation of the Western region, the Piedmont region, and the Eastern region of the State. In addition, the appointments should reflect the ethnic and gender diversity of the State as nearly as practical. The appointing authority shall make a replacement appointment to serve for the unexpired term in the case of a vacancy. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122.

The initial appointments to the Board shall be for terms beginning on July 1, 1997. Of the initial appointments made by the General Assembly upon the recommendation of the Speaker of the House of Representatives and by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one appointment from each group shall be designated to expire on July 1, 1999. Of the initial appointments made by the Governor, two appointments shall be designated to expire on July 1, 1999. The remaining terms shall expire July 1, 2001. Thereafter, each appointment shall be for a term of four years.

The Governor may remove any appointed member of the Board for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Authority who appointed a member of the Board may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(c) Ex Officio Members. -- The following members shall be ex officio, voting members of the Board:

(1) The State Treasurer, or the Treasurer's designee.

(2) The Secretary of Commerce, or the Secretary's designee.

(d) Organization of the Board. -- The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Board may determine. A quorum shall consist of a majority of the members of the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and to perform all the duties of the Board and the Authority.

(e) Compensation of the Board. -- No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Board or officers or other private persons. The members of the Board shall receive no salary for their services but shall be entitled to receive per diem and necessary travel and subsistence expenses payable to members of State boards and agencies generally pursuant to G.S. 138-5 and G.S. 138-6, as the case may be.

(f) Treasurer. -- The Board shall select the Authority's treasurer. The Board shall require a surety bond of the appointee in an amount fixed by the Board, and the premium shall be paid by the Authority as a necessary expense of the Authority.

(g) Executive Director and Other Employees. -- The Board shall appoint an executive director, whose salary shall be fixed by the Board, to serve at its pleasure. The executive director or a person designated by the executive director shall appoint, employ, dismiss, and, within the limits of available funding, fix the compensation of other employees as considered necessary.

(h) Office. -- The Board shall establish an office for the transaction of the Authority's business at the place the Board finds advisable or necessary to implement the provisions of this Part.

"**§ 53A-52. Capital Access Financing Fund.**

The Authority shall establish the Capital Access Financing Fund as a special revenue fund. The Fund shall consist of loans, gifts, grants, appropriations, and any other funds made available for the Fund. Revenue in the Fund does not revert at the

end of a fiscal year, and interest and other investment income earned by the Fund accrues to the Fund.

The Authority shall use monies in the Fund only to guarantee private loans made by federally insured lending institutions to Qualified North Carolina Businesses. The total amount of loan guarantees issued may not exceed five times the amount of money in the Fund.

"**§ 53A-53. Capital Access Financing Program.**

(a) Program Established. -- The Authority shall establish and implement a Capital Access Financing Program in accordance with this section to guarantee private loans made by federally insured lending institutions to Qualified North Carolina Businesses in rural areas, underdeveloped communities, depressed urban commercial areas, and economically distressed areas of the State. Financing shall be targeted to businesses that will create well-paying jobs for North Carolina citizens.

(b) Procedures; Fee. -- The Authority shall establish a procedure for participating lending institutions to apply for loan guarantees on behalf of loan applicants. Each application shall include documentation of the number of jobs to be created as a result of the financing and the expected average wage the jobs will pay. The Authority shall adopt rules and standards to assure that all loan guarantees provided from the Fund are consistent with sound business practices, including requirements that all loans be collateralized, that applicants have sound credit ratings and meet experience standards set by the Authority, and that financing not be speculative. The Authority shall assure that guaranteed loans meet standards such that the loans can be sold on the secondary market.

The Authority shall charge a fee of one percent (1%) of the guaranteed amount of the loan. The face of each guarantee issued must contain a statement that the Authority is obligated to pay the guarantee only from the revenue in the Fund and that neither the taxing power nor the faith and credit of the State or any of its political subdivisions is pledged in payment of the guarantee.

(c) Minimum Wage Standards. -- The Authority shall require as a condition of receiving a loan guarantee from the Fund that jobs to be created by a business must pay at least twenty-five percent (25%) above the median weekly wage paid in the county in which the jobs will be located. For the purpose of this subsection, the median wage in a county is the median average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data are available. The Authority may waive or alter the minimum wage requirement if the area in which the jobs are to be created has an especially severe rate of unemployment or in similar cases involving extreme circumstances.

(d) Minimum and Maximum Guarantee. -- A loan guarantee may not exceed ninety percent (90%) of the unpaid balance of the loan. The Authority shall provide loan guarantees in amounts no less than fifty thousand dollars ($50,000) per business and no greater than one hundred fifty thousand dollars ($150,000) per business. The amount of loan guarantees should not exceed twenty thousand dollars ($20,000) per job to be created, on average.

(e) Priority of Financing. -- In choosing businesses to finance, the Authority shall give priority to start-up businesses; businesses that engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry; businesses that will create high-quality jobs; and businesses that cannot obtain sufficient financing through traditional financial institutions. The Authority shall assign a lower priority to real estate related businesses as defined in G.S. 105-163.010 and to businesses that engage primarily in providing a professional service as defined in Chapter 55B of the General Statutes, construction or contracting, selling or leasing at retail, providing personal grooming or cosmetic services, or offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged. The Authority shall not finance a business engaged as a substantial part of its business in the purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise in making investments. The Authority shall not finance a business formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.

(f) Disbursements. -- The Authority shall pay a participating lender the amount owed under a guarantee on a defaulted loan upon certification of the lender that all collateral for that loan that can reasonably be liquidated has been liquidated.

(g) Technical Assistance. -- The Authority shall provide technical assistance and support to businesses to enable them to obtain loan guarantees and other support from federal agencies and other sources.

"**§ 53A-54. Powers of the Authority.**

(a) The Authority shall have all of the powers necessary to execute the provisions of this Part, which shall include at least the following powers:

(1) The powers of a corporate body, including the power to sue and be sued and to adopt and use a common seal.

(2) To own, acquire, finance, rent, lease, dispose of, encumber, mortgage, or manage real or personal property, but not to acquire property by eminent domain.

(3) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

(4) To apply for, accept, and administer loans and grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available, to expend the money in accordance with the requirements imposed by the lender or donor, and to give any evidences of indebtedness that are required. No indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the Authority shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.

(5) To make loans to or deposits with lending institutions and purchase or sell loans.

(6) To adopt bylaws or rules implementing the provisions of this Part.

(7) To indemnify the Authority and its officers, directors, agents, employees, and adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Authority.

(8) To arrange for the State Treasurer to invest in its obligations pursuant to G.S. 147-69.2(b)(10a).

(b) To execute the powers provided in subsection (a) of this section, the Board shall determine the policies of the Authority by majority vote of the members of the Board present and voting, a quorum having been established. Once a policy is determined, the Board shall communicate it to the executive director, who shall have the sole and exclusive authority to execute the policy of the Authority. No member of the Board shall have the responsibility or authority to give operational directives to any employee of the Authority other than the executive director.

"**§ 53A-55. Purchases and sales of loans.**

If the Authority becomes the owner of a defaulted loan it may purchase or contract to purchase and sell or contract to sell the loan.

"**§ 53A-56. Taxation of property of Authority.**

Property owned by the Authority is exempt from taxation in accordance with Section 2 of Article V of the North Carolina Constitution.

"**§ 53A-57. Authority funds; pledge.**

(a) All Authority funds shall be deposited in one or more banks to be designated by the Board. Funds of the Authority shall be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the chair, the acting chair, or the executive director. Warrants shall be drawn or issued disbursing the funds of the Authority only for a purpose authorized by this Part and only when the account or expenditure has been audited and approved by the Authority or its executive director.

(b) The Authority may not pledge any money other than money in the Fund for payment of a loss. No action by the Authority constitutes the creation of a debt secured by a pledge of the taxing power or of the faith and credit of the State or any of its political subdivisions.

Any pledge made by the Authority shall be valid and binding from time to time when the pledge is made. The money, assets, or revenues of the Authority so pledged and thereafter received by the Authority shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of whether the parties have notice of the lien. Neither the resolution nor any other instrument by which a pledge is created need be recorded or filed in order to establish and perfect a lien or security interest in the property so pledged by the Authority. This section does not prohibit the Authority from selling any assets subject to any pledge except to the extent that

the sale may be restricted by the trust agreement or resolution providing for the issuance of such obligations.

"**§ 53A-58. Cooperation by other State agencies.**

All State officers and agencies shall render the services to the Authority within their respective functions as may be requested by the Authority.

"**§ 53A-59. Annual reports.**

The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the General Assembly, and the State Treasurer. Each report shall be accompanied by an audit of its books and accounts. The costs of all audits, whether conducted by the State Auditor's staff or contracted with a private auditing firm, shall be paid from funds of the Authority.

"**§ 53A-60. Dissolution.**

Whenever the Board determines by resolution that the purposes for which the Authority was formed have been substantially fulfilled and that all obligations incurred by the Authority have been fully paid or satisfied, the Board may declare the Authority to be dissolved. On the effective date of the resolution, the title to all funds and other property owned by the Authority at the time of the dissolution shall vest in the State and possession of the funds and other property shall be delivered to the State."

PART II.

INVESTMENTS BY STATE TREASURER

Section 4. G.S. 147-69.2(b) reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c);

(2) General obligations of other states of the United States;

(3) General obligations of cities, counties and special districts in North Carolina;

(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or without the United States if such obligations bear one of the three highest ratings of at least one nationally recognized rating service and do not bear a rating below the three highest by any nationally recognized rating service which rates the particular security;

(5) Notes secured by mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration on real estate located within the State of North Carolina;

(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the three highest by any nationally recognized rating service which rates the particular securities;

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts which provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common or collective trust funds of banks and trust companies and (iv) real estate investment trusts; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located in the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the book value of all invested assets of the Retirement Systems;

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, and the Legislative Retirement System (hereinafter referred to collectively as the Retirement Systems), preferred or common stocks issued by any company incorporated or otherwise created or located within or without the United States, provided:

a. That common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system;

b. That such corporation shall have paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;

c. That in applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or

not the applicable requirements of this section have been complied with;

d. That the book value of common and preferred stocks including securities convertible into common stocks shall not exceed fifty ~~per centum~~ percent (50%) of the book value of all invested assets of the Retirement Systems; provided, further:

1. Not more than one and one-half ~~per centum~~ percent (1 1/2%) of the book value of such assets shall be invested in the stock of a single corporation, and provided further;
2. The total number of shares in a single corporation shall not exceed eight ~~per centum~~ percent (8%) of the issued and outstanding stock of such corporation, and provided further;
3. As used in this subdivision d. and elsewhere in this section, book value shall mean adjusted cost basis as shown on the records of the State Treasurer.

e. Up to five ~~per cent~~ percent (5%) of the limits authorized in subdivision d. may be invested in the stocks or shares of a diversified investment company registered under the 'Investment Company Act of 1940' which has total assets of at least fifty million dollars ($50,000,000).

f. Individual, common or collective trust funds of banks or trust companies provided that the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) Obligations and securities of the North Carolina Enterprise Corporation, or of a limited partnership in which the North Carolina Enterprise Corporation is the only general partner, not to exceed twenty million dollars ($20,000,000) from all funds.

(10) A limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout transactions, not to exceed thirty million dollars ($30,000,000) from all funds.

(10a) Obligations of the North Carolina Capital Access Authority created in Article 3 of Chapter 53A of the General Statutes. To the extent possible consistent with the State Treasurer's duties, the

State Treasurer shall invest at least one hundred million dollars ($100,000,000) pursuant to this subdivision.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than September 1, 1999. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from any such loss by appropriating to ~~such~~ the Escheat Fund funds equivalent to ~~such~~ the loss."

PART III.

CONFORMING CHANGES

Section 5. The title of Chapter 53A of the General Statutes reads as rewritten:

"Chapter 53A.

Business Development ~~Corporations and North Carolina Capital Resource Corporations.~~ and Access to Capital."

Section 6. The title of Article 3 of Chapter 53A of the General Statutes reads as rewritten:

"ARTICLE 3.

North Carolina Enterprise ~~Corporations.~~ Corporations and the North Carolina Capital Access Authority."

Section 7. G.S. 53A-35 and G.S. 53A-47 are repealed.

Section 8. G.S. 53A-36 reads as rewritten:

"**§ 53A-36. Legislative findings and purpose.**

(a) The General Assembly finds ~~and declares~~ that there exists in ~~the State of~~ North Carolina a serious shortage of mezzanine finance capital and credit available for investment in rural ~~areas~~ areas, underdeveloped communities, depressed urban commercial areas, and economically distressed areas in the State. This shortage of mezzanine finance capital and credit is severe throughout ~~the rural~~ these areas of the State, has persisted for a number of years, and constitutes a grave threat to the welfare and prosperity of all residents of the State. The lack of access to capital prevents North Carolina businesses from creating jobs that would otherwise enhance the economy of the State and provide livelihoods for North Carolina citizens.

(b) The General Assembly finds ~~and declares further~~ that private enterprise and existing federal and State governmental programs have not adequately alleviated the severe shortage of mezzanine finance capital and credit available for investments in ~~rural~~ these areas in the State.

(c) The General Assembly finds ~~and declares~~ that it is a matter of grave public necessity that North Carolina Enterprise Corporations be authorized to be created

and ~~to be~~ empowered to alleviate these severe shortages of mezzanine finance capital and credit for investment in rural areas of the State. North Carolina Enterprise Corporations shall help eliminate barriers to rural economic development by providing mezzanine finance capital and credit, and other types of financing as appropriate, to businesses in rural areas that have been unable to obtain sufficient financing through traditional financial institutions.

(d) The General Assembly finds that it is a matter of grave public necessity that the North Carolina Capital Access Authority be created and empowered to alleviate these severe shortages of capital and credit for investment in rural areas, underdeveloped communities, depressed urban commercial areas, and economically distressed areas of the State. The Authority shall help eliminate barriers to economic development by providing loans, loan guarantees, and other types of financing as appropriate, to small and medium-sized businesses that may have been unable to obtain sufficient financing through traditional financial institutions."

Section 9. G.S. 53A-37 reads as rewritten:

"**§ 53A-37. Definitions.**

The following definitions apply in this Article:

(1) Authority. -- The North Carolina Capital Access Authority created in Part 3 of this Article.

(2) Business. -- A corporation, partnership, association, or sole proprietorship operated for profit.

(3) Depressed urban commercial area. -- A commercial or industrial area of a city in which blight exists in the form of dilapidated, deteriorated, poorly ventilated, obsolete, overcrowded, unsanitary, or unsafe buildings; inadequate and unsafe streets; inadequate lots; or other conditions detrimental to the sound growth of the community, which tend to depress the value of neighboring properties, impair the tax base of the community, and inhibit private efforts to rehabilitate or improve other structures in the area.

(4) Distressed area. -- A county that is designated one of the most economically distressed counties of the State under G.S. 143B-437A or a census tract that has more than fifteen percent (15%) of its population below the poverty line according to the latest federal decennial census.

~~(2)~~ (5) Equity security. -- Common stock, preferred stock, an interest in a partnership, subordinated debt, or a warrant that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.

(6), (7),(8) Reserved.

~~(3)~~ (9) Mezzanine finance. -- An investment in the equity securities or subordinated debt of a Qualified North Carolina Business.

(10) Person. -- An individual, a corporation, a partnership, an association, a trust, or another legal entity.

~~(4)~~ (11) Qualified North Carolina Business. -- A business whose headquarters and principal business operations are located in North Carolina and which, together with its affiliates on a consolidated basis, had gross income during the immediately preceding fiscal year, determined in accordance with generally accepted accounting principles without taking into account extraordinary items, of less than forty million dollars ($40,000,000).

~~(5)~~ (12) Rural areas. -- Any county in North Carolina which does not include within its boundaries a city, as defined by G.S. 160A-1(2), with a population greater than one percent (1%) of the population of North Carolina.

~~(6)~~ (13) Security. -- A security as defined in G.S. 78A-2(11).

~~(7)~~ (14) Subordinated debt. -- Indebtedness that is or will be subordinated to other indebtedness of the issuer. Subordinated debt may be convertible into common stock, preferred stock, or an interest in a partnership.

~~(8)~~ (15) Traditional ~~Financial Institutions.~~ financial institutions. -- Corporations or associations chartered under ~~Chapters~~ Chapter 53 or 54B of the General Statutes."

Section 10. G.S. 53A-38(a) reads as rewritten:

"(a) One or more persons, a majority of whom are residents of this State, may, by filing a certificate of incorporation as provided in subsection (b), incorporate a North Carolina Enterprise Corporation under the provisions of this ~~Article.~~ Part."

Section 11. G.S. 53A-41 reads as rewritten:

"**§ 53A-41. Governing law.**

Except as otherwise provided in this ~~Article,~~ Part, a North Carolina Enterprise Corporation shall be governed by Chapter 55 of the General Statutes."

Section 12. G.S. 53A-42 reads as rewritten:

"**§ 53A-42. Powers.**

A North Carolina Enterprise Corporation created under this ~~Article~~ Part shall have all the powers conferred on business corporations by Chapter 55 of the General Statutes."

Section 13. G.S. 120-123 is amended by adding a new subdivision to read:

"(48) The North Carolina Capital Access Authority, as established by Article 3 of Chapter 53A of the General Statutes."

PART IV.

EFFECTIVE DATE

Section 14. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 271
Proposed Committee Substitute S271-CSLC-5/21
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION
28-MAY-97

Short Title: Small Business Capital & Growth Act. (Public)

Sponsors:

Referred to: Finance.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE AT LEAST 25,000 JOBS FOR NORTH CAROLINA BY PROVIDING ACCESS TO CAPITAL FOR SMALL AND MEDIUM-SIZED NORTH CAROLINA BUSINESSES THROUGH LOAN GUARANTEES.

The General Assembly of North Carolina enacts:

Section 1. This act is the Small Business Capital and Growth Act of 1997.

Section 2. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-437B. Capital Access Loan Guarantee Fund.**

(a) Creation; Purpose. -- The Capital Access Loan Guarantee Fund is created as a special revenue account in the Department of Commerce to provide loan guarantees to qualified North Carolina businesses, as defined in G.S. 53A-37. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to the Fund.

(b) Capital Access Loan Guarantee Program. -- The Capital Access Loan Guarantee Fund shall be used to guarantee private loans made by federally insured lending institutions to qualified North Carolina businesses for capital costs of business start-ups and expansions. A loan guarantee from the Fund may not exceed

ninety percent (90%) of the unpaid balance of the loan. The loan guarantees shall be in amounts no less than twenty-five thousand dollars ($25,000) per business and no more than one hundred fifty thousand dollars ($150,000) per business. The loan proceeds must be used to acquire, construct, or improve capital assets and may not be used for operating expenses. The term of the loan may not exceed 20 years and the loan must be callable at up to seven years. The loan applicant must invest equity of at least ten percent (10%) of the project amount. The Fund shall charge a fee of one percent (1%) of the guaranteed amount of a loan.

(c) Conditions for Loan Guarantees. -- The Department of Commerce shall assure that all loan guarantees provided from the Fund are consistent with sound business practices by requiring that the loans be collateralized, that the applicants have sound credit ratings and meet experience standards set by the Department, and that financing not be speculative. The Department of Commerce shall assure that guaranteed loans meet standards such that the loans can be sold on the secondary market.

The Fund shall guarantee only loans that will result in the creation of new jobs. The amount of loan guarantees should not exceed twenty thousand dollars ($20,000) per job to be created, on average. The Department shall require as a condition of receiving a loan guarantee from the Fund that jobs to be created by a business as a result of the loan guarantee must meet the wage standard established in G.S. 105-129.4(b). The Department may waive or alter this minimum wage requirement if the area in which the jobs are to be created has an especially severe rate of unemployment or in similar cases involving extreme circumstances.

(d) Priority of Financing. -- In choosing businesses to finance, the Department of Commerce shall give priority to start-up businesses; businesses that engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry; businesses that will create high-quality jobs; and businesses that cannot obtain sufficient financing through traditional financial institutions. The Department shall assign a lower priority to real estate related businesses as defined in G.S. 105-163.010 and to businesses that engage primarily in providing a professional service as defined in Chapter 55B of the General Statutes, construction or contracting, selling or leasing at retail, providing personal grooming or cosmetic services, or offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is

charged. The Department shall not finance a business engaged as a substantial part of its business in the purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise in making investments. The Department shall not finance a business formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.

(e) Application. -- A participating lender may apply to the Department of Commerce for a loan guarantee on behalf of a loan applicant. The application must include the following:

(1) Borrower's name.

(2) Borrower's address and business address, if it is different.

(3) Documentation that the borrower is a qualified North Carolina business as defined in G.S. 53A-37.

(4) Loan amount.

(5) Terms of the loan.

(6) Purpose of the loan.

(7) Documentation of the number of jobs to be created as a result of the financing and the expected average wage the jobs will pay.

(9) Any other information required by the Department of Commerce.

(f) Administration. -- All loan guarantees must be approved by the Department of Commerce. The total amount of loan guarantees issued may not exceed ten times the amount of money in the Fund. The Department may not pledge any money other than money in the Fund for payment of a loss. No action by the Department constitutes the creation of a debt secured by a pledge of the taxing power or of the faith and credit of the State or any of its political subdivisions. The face of each guarantee issued must contain a statement that the Department is obligated to pay the guarantee only from the revenue in the Fund and that neither the taxing power nor the faith and credit of the State or any of its political subdivisions is pledged in payment of the guarantee.

(g) Disbursements. -- The Department of Commerce shall pay a participating lender the amount owed under a guarantee on a defaulted loan upon certification of the lender that all collateral for that loan that can be reasonably liquidated has been liquidated.

(h) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made

to the fund and the loan guarantees made from the fund, and the impact of the guarantees on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom loan guarantees were made, in what amounts, and for what purposes."

Section 3. There is appropriated from the General Fund to the Capital Access Loan Guarantee Fund created by this act the sum of twenty-five million dollars ($25,000,000) for the 1997-98 fiscal year and the sum of twenty-five million dollars ($25,000,000) for the 1998-99 fiscal year to be used as provided in this act. It is the intent of the General Assembly that this appropriation represents nonrecurring funds and shall not become part of the Department of Commerce's continuation budget after the 1997-99 fiscal biennium.

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

EXPLANATION OF SENATE BILL 271

Proposed Committee Substitute

Small Business Capital & Growth Act

TO: Senate Finance Committee
FROM: Sabra Faires, Committee Counsel
DATE: June 3, 1997
SPONSOR: Senator Larry Shaw

The proposed committee substitute for **Senate Bill 271** establishes the Capital Access Loan Guarantee Fund and appropriates $50 million from the General Fund to this new Fund during the 1997-99 biennium. Revenue in the Fund is to be used to guarantee private loans made by federally insured lending institutions to qualified North Carolina businesses for the purpose of acquiring, constructing, or improving capital assets. A qualified North Carolina business is a business whose headquarters and principal business operations are located in this State and that, together with any affiliates, had gross income during the preceding fiscal year of less than $40 million dollars. The bill becomes effective July 1, 1997.

The Fund is to be administered by the Department of Commerce. A loan guarantee from the Fund is subject to certain limits. The amount guaranteed may not exceed 90% of the unpaid balance of the loan. The guarantee must be for at least $25,000 and cannot exceed $150,000. The term of the loan that is guaranteed cannot exceed 20 years and the loan must be callable at up to seven years. The loan must result in the creation of new jobs. The new jobs must meet the wage standards for the existing jobs tax credit, unless the Department waives the wage standard because of extreme circumstances in the locality. To be eligible for a loan guarantee, the loan applicant must invest equity in the business of at least 10% of the loan amount. The loan must be collateralized and the loan applicant must have a sound credit rating and meet the experience standards set by the Department.

The bill establishes a priority for making loan guarantees. The priorities are for start-up businesses, businesses that engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, businesses that will create high-quality jobs, and businesses that cannot obtain sufficient financing from traditional sources. Businesses that engage primarily in making investments or in financing are not eligible for a loan guarantee from the Fund.

A fee applies to a person who receives a loan guarantee from the Fund. The fee is 1% of the guaranteed amount of the loan.

A cap applies to the total amount of loans that the Fund can guarantee. The cap is 10 times the amount of money in the Fund. The Department of Commerce must report annually on the activities of the Fund.

North Carolina Department of Revenue

James B. Hunt, Jr.
Governor

June 2, 1997

Muriel K. Offerman
Secretary

MEMORANDUM

TO: Senator Larry Shaw
North Carolina General Assembly

FROM: Niki Underwood, Director
Tax Research Division

SUBJECT: Information for Senate Bill 271

Per your request, following is a rough presentation based on the addition of 25,000 jobs into North Carolina's economy at an average wage of $20,000, for a total of $500,000,000. Of course, we have no knowledge of how many jobs would actually be created if Senate Bill 271 were enacted, nor what the actual average wage would be. Given the uncertainty attached to these estimates, they should not be considered as estimates of the fiscal impact of Senate Bill 271, but only as an indicator of the potential effect, given the assumptions which you provided.

The percentages used to distinguish state and local taxes are based primarily on estimates of state and local taxes related to total personal income from data found in Governmental Finances: 1992-93, published by the Bureau of the Census, US Department of Commerce, and presented by OSBM in the North Carolina Tax Guide 1996. It was further assumed that 80% of total state and local taxes would be paid by individuals.

° 25,000 jobs @ $20,000 =		$500,000,000	
° Estimated % of personal income of individuals going to state taxes: 6.40%			
° Estimated state taxes: 6.40% X $500,000,000 =			$32,000,000
-- Individual income taxes:	50%	$16,000,000	
-- Sales tax:	30%	9,600,000	
-- All other state taxes:	20%	6,400,000	
° Estimated % of personal income of individuals going to local taxes: 2.64%			
° Estimated local taxes: 2.64% X $500,000,000 =			13,200,000
-- Property taxes:	72%	$9,504,000	
-- Sales tax:	25%	3,300,000	
-- All other local taxes:	3%	396,000	
° Total from above computations			$45,200,000

cc: Jack L. Harper
David Crotts

P.O. Box 25000, Raleigh, North Carolina 27640
State Courier 51-71-00
An Equal Opportunity / Affirmative Action Employer

Summary of Top Twenty Recommendations

1 – **4A** [1]	.17	**Reengineer the public school system**
2 – **3A**	.19	**Revise Worker's Compensation**
3 – **8A**	.15	**Enact a state-level medical savings account**
4 – **8B**	.21	**Allow 100% deduction for health insurance**
5 – **6A**	.11	**Equitable participation of small business in State procurement**
6 – **1A**	.1	**Establish loan program for start-up small business**
7 – **2A**	.15	**Encourage cost-effective remediation of environmentally-tainted properties**
8 – **5B**	.10	**Pay fair market compensation for "takings"**
9 – **5A**	.1	**Conduct cost/benefit analysis of new regulations or legislation**
10 -- **6E**	.7	**Modernize and enforce the Umstead Act**
11 – **2B**	.12	**Assure that environmental laws will not undermine small business**
12 – **3C**	.15	**Support health insurance purchasing alliances for small business**
13 – **3B**	.14	**Reform the State's occupational safety laws**
14 – **7B***(t)*	.12	**Establish an Ombudsman's office for small business**
14 – **7A***(t)*	.6	**Allow wage garnishment for debts**
16 -- **8E**	.20	**Eliminate inheritance tax burden on small businesses**
17 -- **1B**	.25	**Provide business funding outside of traditional capital sources**
18 – **8D**	.9	**Provide a more favorable tax treatment for sales of small business**
19 – **5H**	.8	**Prevent public-funded organizations from competing with private enterprise**
20 - **8C**	.2	**Enact graduated corporate tax rate.**

[1] Bold number identifies issue area; letter is priority as identified by delegates from that issue session.

Rhode Island Ranks High in Helping Small Businesses

By UDAYAN GUPTA
Staff Reporter of THE WALL STREET JOURNAL

WANT FINANCIAL SUPPORT for a small business? Try Rhode Island.

The tiny New England state, followed by Massachusetts, Minnesota and Illinois, provides the best financial support for small and medium-sized businesses, according to the Corporation for Enterprise Development, a Washington, D.C., nonprofit group that tracks economic development activity. Arkansas, Mississippi and New Mexico rank as the weakest states in such support, the group said in its annual development report card.

According to the report, Rhode Island has the nation's most active banks in small-business lending. Moreover, Rhode Island introduced an economic development program in 1974 to offset the effects of the closing of military bases, says Paul Barrett, the state's director of economic development. As part of the program, Rhode Island has floated or guaranteed nearly $1 billion in bonds to help small-sized and medium-sized businesses, he adds.

For instance, when Alpha Beta Technology, a Massachusetts biotechnology start-up, wanted to finance a manufacturing facility and couldn't find the capital, the state guaranteed a $30 million bond issue and also invested in Alpha Beta stock warrants. The deal, which called for Alpha Beta to put up $10 million in cash, has brought 200 manufacturing jobs to Rhode Island, notes Mr. Barrett.

In the past three years, a state small-business loan fund has lent over $7.2 million to 89 companies "that were first rejected by at least two commercial banks," Mr. Barrett says. For example, Rhode Island provided $150,000 in working capital loans to Rau Fasteners Inc., a Canadian fastener maker that wanted to relocate in the area but couldn't find a bank to lend it money.

The Washington research group ranked Massachusetts and Minnesota high on the list because both provide high levels of venture-capital financing. Massachusetts banks, "while having only moderate amounts of capital and overall loan activity, are concentrating on a lot of commercial and industrial loans," the report says. Minnesota ranked high because of its strong levels of non-traditional financing and high level of venture capital financing.

In most states that ranked poorly in the report, banks were relatively passive in small-business development and state governments did little to take up the slack. Arkansas, for instance, has the 16th highest rate of deposits per capita but ranks in the bottom 10 for all loan activity.

"Although there is money in Arkansas banks, they just aren't using it," the report said.

* * *

FISCAL ANALYSIS MEMORANDUM

DATE: June 3, 1997

TO: Members, Senate Finance Committee

FROM: Mark Trogdon
Fiscal Research Division

RE: SB 271 – Proposed Committee Substitute S271-CSLC-5/21

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
GENERAL FUND EXPENDITURES					
Program Costs	**$164,643**	**$92,572**	**$95,602**	**$98,826**	**$102,259**
Fund Capitalization	**$25,000,000**	**$25,000,000**			
SPECIAL FUND REVENUES					
1% Loan Fee	**$22,500**	**$22,500**	**$22,500**	**$22,500**	**$22,500**
POSITIONS:	**2.0**	**2.0**	**2.0**	**2.0**	**2.0**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Commerce, Industrial Finance Center

EFFECTIVE DATE: July 1, 1997

BILL SUMMARY -- The proposed committee substitute creates the "Capital Access Loan Guarantee Fund," and the "Capital Access Loan Guarantee Program," for the purpose of providing loan guarantees to qualified North Carolina businesses; a "qualified North Carolina business" is generally defined as a business (including affiliates) that has gross income of $40 million or less (GS 53A-37). The proposed legislation appropriates a total of $50 million in non recurring appropriations over the 1997-99 biennium to capitalize the Fund ($25 million in each fiscal year); in addition, the legislation authorizes the levying of a 1% loan fee on the guaranteed amount of a loan provided by a participating lender. Receipts generated from the 1% loan fee

and any investment earnings are deposited to the Fund. The proposed committee substitute requires the Department of Commerce to administer the Fund and its associated program requirements. The bill does not authorize the use of Fund earnings or appropriations for administrative expenditures.

ASSUMPTIONS AND METHODOLOGY:

Loan Guarantee Fund

CAPITAL ACCESS LOAN GUARANTEE FUND – PROJECTED OPERATING IMPACT

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
1% Loan Fee	22,500	22,500	22,500	22,500	22,500
GF Appropriation	25,000,000	25,000,000			
Interest Earnings @ 6%	1,541,945	3,192,872	3,380,087	3,578,849	3,789,870
EXPENDITURES					
Estimated Fund Losses	-	(180,000)	(180,000)	(180,000)	(180,000)
FUND BALANCE	26,564,445	54,599,817	57,822,404	61,243,753	64,876,124

1) The estimated number of loan requests per year: 100

2) The estimated number of actual loans guaranteed per year: 50

3) The estimated average per loan amount guaranteed by the Fund: $45,000

4) The estimated amount of receipts generated by the 1% loan fee authorized in the legislation is estimated at $22,500 per year. This sum is calculated as follows: estimated average loan amount guaranteed, ($45,000) *multiplied* by the estimated number of actual loans guaranteed per year (50), *multiplied* by the 1% loan fee – [$45,000 x 50 x 1% = $22,500].

5) It is estimated that 5 loans will default on an annual basis and will require the Fund to compensate participating lending institutions for up to 90% of these loan losses. The amount of default losses are estimated at $180,000 per year. This number is calculated by assuming that 5 loan defaults per year, *multiplied* by the estimated average per loan guarantee of $45,000, *minus* any collectable loan collateral (estimated at a value of 20% of the original loan guarantee) -- [(5 x $45,000) - (225,000 x 20%) = $180,000].

6) Interest earnings on the Fund's cash balance are estimated at 6% per year over the five-year projection.

Program Administration Costs

1) Administrative program costs include recurring expenditures for salaries and benefits for one Industrial Finance Specialist ($57,132) and one Accounting Clerk V ($32,511), and non recurring costs in the first year for legal fees ($30,000), marketing materials ($25,000), computer equipment ($10,000) and office equipment ($10,000).

2) Salary expenditures have been adjusted for inflation over the projected five-year estimate under the following schedule: FY 1997-98: 3.9%, FY 1998-99: 3.4%, FY 1999-00: 3.4%, FY 2000-01: 3.5%, and FY 2001-02: 3.6%.

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6-3-97

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Bevacqua	WCCMSI
Joyce Peters	JP Assoc.
Alice Garland	ElectriCities
Katherine Davis	ElectriCities
Sarah Fieler	DEHNR
Leighton Poper	ZDA, PA
John Bowdish	"
Rem Mangum	Georgia-Pacific
Secret Jackson	Lt. Gov.
John Cyrus	NC State Grange
Patty Berry	CCNC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6-3-97

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ray Harrell	First Baptist Church Lexington, NC
Pete Martin	D MHDDSAS
John Boyd	C.E.C.A.
Henry Jones	Attorney Raleigh
Patti Seawell	DOR
Patrice Mitchell	UNC-Greensboro Grad Student
Nancy Pomeranz	DOR
Danny Massey	"
Pete Henderson	"
Michael Carpenter	NCMBA
Paul Wilms	NCMBA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6-3-97

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jane P. Gray	DOJ
ANDY VANORE	DOJ
William A. Downey	L.A. Downey & Son, Inc
Dave Simpson	Carolinas AGC
Kenny Clegg	" "
Kyle McBride	NCDOT
Charles Francis	Woods & Francis
David Dixon	NMC
Donny Hunt	NCCCS
I. B. Broke	NCAGS
Ed Rega	NCACC
I. B. Po	self

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6-3-97

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.
Oliver Cromwell	London
Sandy Sands	WCSR
Eugene Boyce	Smith Class Action
Paul Zopin	OSBM

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, June 26, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **915** Intangibles Tax Remedy

Draft Number:	PCS7808
Sequential Referral:	Appropriations
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Bill 6/3/97

Attachment #4

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, June 03, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **283** Perquimans School Acquisition
Sequential Referral: None
Recommended Referral: None

H.B. **411** Currituck Game Comm. Changes
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: None

Attachment #5

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, June 04, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **271** Small Business Capital & Growth Act

Draft Number:	PCS8715
Sequential Referral:	Appropriations
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **260** Increase Conservation Tax Credit

Draft Number:	PCS2343
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED 2

Committee Clerk Comment: Bills on report heard in Sen. Finance on 6/3/97

NOTE: CORRECTED REPORT

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 4, 1997

12 NOON - ROOM 544 LOB

The Senate Finance Committee met on June 4, 1997, with Senator Kerr presiding. There were 18 committee members present.

H.B. 97 - Gastonia Supplemental Funds

Representative Dickson was recognized to explain H.B. 97 and at the conclusion of his explanation, Senator Lee moved for "favorable" report and the motion carried. Copy of bill included in the minutes.

H.B. 933 - Up Pharmacy Fees

Representative Jarrell was recognized to explain this bill. Senator Hoyle sent forth an amendment which was adopted on his motion. At the conclusion of Representative Jarrell's explanation and after discussion, Senator Lee moved for a "favorable" report, as amended, and the motion carried. Copy of bill, amendment and fiscal note included in the minutes.

H.B. 804 - Lincoln Local Roads

Senator Odom was recognized to explain this bill for Representative Kiser.
At the conclusion of his explanation, there were several questions from the committee members to Senator Odom and to staff. Don Goins. Chief Engineer for Operations with the North Carolina Department of Transportation gave a further explanation of this bill. Senator McDaniel moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

S.B. 1234 - Revenue/Finance Personnel Changes

This bill was added on to honor Sabra J. Faires who will be leaving the legislature to become Assistant Secretary of Revenue for Tax Administration. The committee members and visitors were given an opportunity to express their best wishes to Ms. Faires. Senator Kerr also announced that Ms. Martha Walston would be coming on board to work with the Senate Finance Committee. Copy of bill included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

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

Attachment # 1

AGENDA

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 4, 1997

12 NOON - ROOM 544

H.B. 97 - GASTONIA SUPPLEMENTAL FUNDS - REP. DICKSON

H.B. 804 - LINCOLN LOCAL ROADS - REP. KISER

H.B. 933 - UP PHARMACY FEES - REP. JARRELL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 97
Committee Substitute Favorable 2/27/97

Short Title: Gastonia Supplemental Funds. (Local)

Sponsors:

Referred to:

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE ADMINISTRATION OF THE GASTONIA POLICEMEN'S SUPPLEMENTAL RETIREMENT FUND AND THE GASTONIA FIREMEN'S SUPPLEMENTAL RETIREMENT FUND FROM THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. Article VIII of the Charter of the City of Gastonia, being Chapter 557 of the 1991 Session Laws, reads as rewritten:

"ARTICLE VIII. RETIREMENT.

"Sec. 8.1. **Gastonia Firemen's Supplemental Retirement Fund.** The Gastonia Firemen's Supplemental Retirement Fund shall continue as authorized by Chapter 537, Session Laws of 1949, as amended by Chapter 111, Session Laws of 1957; Chapter 51, Session Laws of 1975; and Chapter 1016, Session Laws of 1983 (Reg. Sess. 1984). The Gastonia Firemen's Supplemental Retirement Fund is not subject to Article 3 of Chapter 159 of the General Statutes.

"Sec. 8.2. **Gastonia Policemen's Supplemental Retirement Fund.** The Gastonia Policemen's Supplemental Retirement Fund shall continue as authorized by Chapter 946, Session Laws of 1955, as amended by Chapter 112, Session Laws of 1957; Chapter 301, Session Laws of 1959; Chapter 198, Session Laws of 1965; Chapter 979, Session Laws of 1965; and Chapter 809, Session Laws of 1983. The Gastonia Policemen's Supplemental Retirement Fund is not subject to Article 3 of Chapter 159 of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 933

Short Title: Up Pharmacy Fees. (Public)

Sponsors: Representatives Jarrell; Arnold, Black, Cole, Fitch, Fox, Gamble, Gardner, Howard, Miller, Neely, Nye, and Sherrill.

Referred to: Insurance.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEES COLLECTED UNDER THE PHARMACY PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.24 reads as rewritten:

"**§ 90-85.24. Fees collectible by Board.**

The Board of Pharmacy shall be entitled to charge and collect not more than the following fees: for the examination of an applicant for license as a pharmacist, ~~one hundred fifty dollars ($150.00)~~ one hundred sixty dollars ($160.00) plus the cost of the test material; for renewing the license as a pharmacist, ~~sixty-five dollars ($65.00);~~ one hundred ten dollars ($110.00); for renewing the license of an assistant pharmacist, ten dollars ($10.00); for licenses without examination as provided in G.S. 90-85.20, original, ~~three hundred dollars ($300.00);~~ four hundred dollars ($400.00); for original registration of a ~~drugstore, two hundred fifty dollars ($250.00),~~ pharmacy, three hundred fifty dollars ($350.00), and renewal thereof, ~~one hundred twenty-five dollars ($125.00);~~ one hundred seventy-five dollars ($175.00); for annual registration as a dispensing physician under G.S. 90-85.21(b), fifty dollars ($50.00); for annual registration as a dispensing physician assistant under G.S. 90-18.1, fifty dollars ($50.00); for annual registration as a dispensing nurse practitioner under G.S. 90-18.2, fifty dollars ($50.00); for registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), twenty-five dollars ($25.00); for a duplicate of any license, permit, or registration issued by the Board, twenty-five dollars ($25.00); for registration to dispense devices, deliver medical equipment, or both, three hundred

dollars ($300.00) per year. All fees shall be paid before any applicant may be admitted to examination or the applicant's name may be placed upon the register of pharmacists or before any license or permit, or any renewal thereof, may be issued by the Board."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 933

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

H933-ARB-1

Page 1 of __

Date June 4 ,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator _____

moves to amend the bill on page 2, line 5, by rewriting the line to read:

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House 933 (First Edition)

SHORT TITLE: Up Pharmacy Fees

SPONSOR(S): Rep. Jarrell, et al

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Pharmacy Operating Acct.	$567,700	$567,700	$567,700	$567,700	$567,700
EXPENDITURES					
Pharmacy Operating Acct.	(see ASSUMPTIONS AND METHODOLOGY)				
POSITIONS:	4	4	4	4	4

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Pharmacy

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

BILL SUMMARY: The act increases the fees collected under the Pharmacy Practice Act. The act also adds new fees for dispensing physicians, dispensing physician assistants, dispensing nurse practitioner, pharmacist personnel, and duplicate license.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

The following chart assumes the North Carolina Board of Pharmacy will charge the maximum fee allowed by the bill. The Board of Pharmacy provided the number of current licenses and an estimate of the number of new licenses. Many of the fees in the bill have not been increased since 1988.

	Current Fee	Proposed Fee	Number Issued	FY 95-96 Actual Revenue	FY 97-98 Projected Revenue
Pharmacist Renewals	$ 65	$ 110	7,638	$ 496,470	$ 840,180
Pharmacist Reinstatements	80	125	72	5,760	9,000
Pharmacy Permits - Original	250	350	178	44,500	62,300
Pharmacy Renewals	125	175	2,019	252,375	353,325
Pharmacy Reinstatements	250	350	25	6,250	8,750
Reciprocity	300	400	165	49,500	66,000
Exam fee (plus cost of test)	150	160	285	90,300	93,150
Physician Dispensing	0	50	478	0	23,900
PA/FNP Dispensing	0	50	100	0	5,000
Pharmacist Personnel	0	25	2000	0	50,000
Dup. License, Permit/Reg.	0	25	50	0	1,250
Total Revenue				$ 945,155	$ 1,512,855
Difference					$ 567,700

EXPENDITURES

The Board of Pharmacy plans to double their inspection/investigation staff to do routine annual inspections and to investigate complaints. The hiring of four additional inspectors will cost at least $240,000 per year. The Board has not hired a new pharmacy inspector since 1987.

The proposed new fees in HB 933 will cover the costs of registering physician assistants, nurse practitioners, and physicians that dispense drugs. The Board has been registering these professionals since 1977 (1988 for doctors) without charge. The Board estimates that it has spent $250,000 on registering these groups and investigating complaints about these professionals.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington**TomC**
DATE: April 28, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 804
Committee Substitute Favorable 4/28/97

Short Title: Lincoln Local Roads. (Local)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO GIVE LINCOLN COUNTY AUTHORITY TO BUILD AND IMPROVE ROADS WITHIN LINCOLN COUNTY THAT ARE NOT PART OF THE STATE HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. A county may build, construct, improve, reconstruct, widen, pave, install curbs and gutters, and otherwise build and improve roads and streets that are located in the county and outside a city and that are not part of the State highway system and may advertise, accept bids, enter into contracts, and undertake any other action reasonably necessary to carry out the powers granted by this act. A county shall make special assessments against benefitted property to pay for any work in accordance with the procedures set forth in this act. The authority granted by this act shall include the authority to make any improvements necessary to bring roads up to State standards so that they may be accepted into the State highway system.

Section 2. Before a county may finance all or a portion of the cost of improvements to a subdivision or residential street, it must receive a petition for the improvements signed by at least seventy-five percent (75%) of the owners of property to be assessed, who must represent at least seventy-five percent (75%) of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. The petition shall state that portion of the cost of the improvement to be assessed, which shall be the local share required by policies of the Secondary Roads Council. A county may treat as a unit and consider as one street two or more connecting State-maintained subdivision or residential streets in a petition filed under this

subsection calling for the improvement of subdivision or residential streets subject to property owner sharing in the cost of improvement under policies of the Department of Transportation.

Property owned by the United States shall not be included in determining the lineal feet of frontage on the improvement, nor shall the United States be included in determining the number of owners of property abutting the improvement. Property owned by the State of North Carolina shall be included in determining frontage and the number of owners only if the State has consented to assessment as provided in G.S. 153A-189. Property owned, leased, or controlled by railroad companies shall be included in determining frontage and the number of owners to the extent the property is subject to assessment under G.S. 160A-222. Property owned, leased, or controlled by railroad companies that is not subject to assessment shall not be included in determining frontage or the number of owners.

No right of action or defense asserting the invalidity of street assessments on grounds that the county did not comply with this subsection in securing a valid petition may be asserted except in an action or proceeding begun within 90 days after the day of publication of the notice of adoption of the preliminary assessment resolution.

Section 3. This act is intended to provide a means of assisting in financing improvements to streets and roads that are not on the State highway system. By financing improvements under this act, a county does not acquire or assume any responsibility for the streets or roads involved, and a county has no liability arising from the construction of an improvement to a road or the maintenance of the street or road.

Section 4. A county may make assessments against benefitted property to recoup all or part of the costs of the work authorized in this act on the basis of:

(1) The frontage abutting on the project, at an equal rate per foot of frontage; or

(2) The street frontage of the lots served, or subject to being served, by the project, at an equal rate per foot of frontage; or

(3) The area of land served, or subject to being served, by the project, at an equal rate per unit of area; or

(4) The valuation of land served, or subject to being served, by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or

(5) A combination of two or more of these bases. For each project, the Board of Commissioners shall endeavor to establish an assessment method from among the bases set out in this section that will most accurately assess each lot or parcel of land according to the benefit conferred upon it by the project. The Board's decision as to the method of assessment is final and not subject to further review and challenge.

Section 5. The Board of Commissioners shall develop guidelines for determining which projects, authorized by this act, to pursue and in what order. The Board of Commissioners may consider, among other reasonable factors:

(1) The chronological order in which it receives petitions as provided for in this act;

(2) The number of citizens to be served per mile by the proposed project;

(3) The severity of the need to be alleviated by the proposed project relative to other similar situations in the county; or

(4) Funds advanced, if any, by the citizens to be served by the proposed project to participate in paying for the project.

Section 6. Except as otherwise provided in this act, a county shall follow the procedures set forth in Article 9 of Chapter 153A of the General Statutes in making, giving notice of, providing for payment of, and enforcing assessments for projects authorized in this act.

Section 7. This act applies to Lincoln County only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1234

Short Title: Revenue/Finance Personnel Changes. (Public)

Sponsors: Senators Kerr and Hoyle.

Referred to: Finance, if favorable, Appropriations.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO POLICY, LEADERSHIP, AND PERSONNEL OF THE DEPARTMENT OF REVENUE AND THE SENATE COMMITTEE ON FINANCE.

The General Assembly of North Carolina enacts:

Section 1. The Governor may not appoint any attorney currently employed by the Fiscal Research Division of the Legislative Services Office to any position in the Executive Branch of State Government.

Section 2. Effective May 1, 1997, the position of Assistant Secretary of Revenue for Tax Administration is eliminated. The budget of the Department of Revenue for the 1997-99 fiscal biennium is reduced by two hundred thousand dollars ($200,000) a year.

Section 3. Sabra J. Faires of Wake County is appointed honorary co-chair of the Senate Committee on Finance and shall serve in that capacity for the remainder of the 1997-98 Session of the General Assembly.

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

Attachment # 2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6-4-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Muriel Offerman	DOR
Dan Holman	Conf / Sierra Club / TNC
DAN GERLACH	BTC
Paul Gwin	OSBM
Patti Stowell	DOR
Kyle Underwood	DOR
NANCY POMERANZ	DOR
Bernard Allen	SOS
Larry Peters	DOT
Don Goins	N.C.D.O.T.
Ruth Sappie	NCDOT
Jan Ramguard	NCANTA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cover	BPMHL
Ed Regan	N.C.A.C.C.
Don McCorquodale	NCRMA
Andy Romanet	NCLM
Mary Cornilia	Mecklenburg County
Helen Lippman	Meck. Co.
B.K. Wilson	Duplin County
Nancy Moore	Duplin County

Attachment # 3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, June 04, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **97** Gastonia Supplemental Funds.
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **804** Lincoln Local Roads.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

H.B. **933** Up Pharmacy Fees.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: HB 97 HB 804 and HB 933

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 10, 1997

12 NOON - ROOM 544 LOB

The Senate Finance Committee met on June 10, 1997, with Senator Kerr presiding. There were 22 committee members present.

Senator Kerr welcomed Ms. Martha Walston who will be working with the Senate Finance since Sabra Faires has left the Legislature to go with the Department of Revenue. Ms. Walston worked with the Legislature some 10 years ago and is returning. She was recognized for remarks and gave a brief review of her background.

H.B. 604 - Morehead-Newport ETJ Authority

Senator Ballantine was recognized to explain this bill for Representative Smith. At the conclusion of his explanation, there were several questions from the committee members. Senator Dannelly moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

H.B. 698 - Morehead-Newport Annexations

Senator Ballantine was also recognized to explain this bill for Representative Smith. At the conclusion of his explanation, Senator moved for a "favorable" report and the motion carried. Copy of bill and explanation included in the minutes.

S.B. 730 - Industrial Revenue Bond Changes

Senator Ballance was recognized to explain this bill. There was a proposed committee substitute and on motion by Senator Lee, the PCS was adopted by the committee. At the conclusion of Senator Ballance's explanation, Martha Harris, Staff Attorney, gave a further explanation of the bill. Mr. Richard Rogers, DEHNR, spoke in support of this bill. After a discussion of this bill, Senator Larry Shaw made a motion that this committee substitute be given a "favorable" report and the motion carried. Copy of bill, committee substitute and explanation included in the minutes.

Senator Kerr announced that Representative Hurley has requested that **H. B. 476 - Vital Records Access** - be held over until tomorrow.

S.B. 1012 - Publication of Appellate Decisions

Senator Rucho was recognized to explain this bill. Also, Senator Odom spoke in support of this bill. At the conclusion of Senator Rucho's explanation and Senator Odom's presentation, there was a lengthy discussion on this bill with questions from the committee members to the bill sponsor and to staff. Speaking in opposition to the bill was Chief Judge S. Gerald Arnold, Court of Appeals. Copy of bill with information, explanation and fiscal note included in the minutes.

Senator Kerr had previously announced that this bill would not be voted on today.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

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

Attachment #1

SENATE FINANCE COMMITTEE

JUNE 10, 1997

12 NOON - ROOM 544

S.B. 730 Industrial Revenue Bond Changes. - Sen. Ballance

S.B. 1012 Publication of Appellate Decisions. - Sen. Rucho

H.B. 476 Vital Records Access. - Rep. Hurley

H.B. 604 Morehead-Newport ETJ Authority. - Rep. Smith

H.B. 698 Morehead-Newport Annexations. - Rep. Smith

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 604
Committee Substitute Favorable 4/29/97

Short Title: Morehead-Newport ETJ Authority. (Local)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWNS OF MOREHEAD CITY AND NEWPORT TO EXERCISE EXTRATERRITORIAL PLANNING JURISDICTION OVER AN AREA EXTENDING NOT MORE THAN TWO MILES FROM THEIR CORPORATE LIMITS.

The General Assembly of North Carolina enacts:

Section 1. The Towns of Morehead City and Newport may exercise extraterritorial planning jurisdiction as provided in Article 19 of Chapter 160A of the General Statutes within an area extending not more than two miles beyond their respective corporate limits. In the area where the Towns' extraterritorial planning jurisdiction overlaps, the dividing line shall begin where the run of Hull Swamp Creek empties into the Newport River, and then runs with the run of Hull Swamp Creek to the northwest corner of the property of Merritt-Williams Ford in the southern right-of-way margin of U.S. Highway 70, thence northwestwardly with the southern margin of U.S. Highway 70 to the northwesternmost corner of the property of Paul Wysocki (tax parcel number 634608990762), and thence with the Wysocki northwest line in a southwestern direction to the North property line of Mamie Murdoch (tax parcel number 634704708233), and thence westwardly and southwardly with the north and West lines of the Murdoch property back to the run of Hull Swamp Creek.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 698
Committee Substitute Favorable 4/29/97
Senate State Government, Local Government, and Personnel Committee Substitute Adopted 6/3/97

Short Title: Morehead-Newport Annexations. (Local)

Sponsors:

Referred to: Finance.

March 31, 1997

A BILL TO BE ENTITLED

AN ACT LIMITING THE AUTHORITY OF THE TOWNS OF MOREHEAD CITY AND NEWPORT TO ANNEX NONCONTIGUOUS AREAS AND MODIFYING THE LAWS RELATING TO SATELLITE ANNEXATIONS WHICH APPLY TO MOORESVILLE.

The General Assembly of North Carolina enacts:

Section 1. The Towns of Morehead City and Newport may not annex noncontiguous areas as provided in Part 4 of Article 4A of Chapter 160A of the General Statutes if the area to be annexed is closer to the other Town's corporate limits than it is to the corporate limits of the Town desiring to annex the area. However, either Town may annex such an area if it lies within an area where the Town is exercising its extraterritorial planning jurisdiction under Article 19 of Chapter 160A of the General Statutes.

Section 2. Section 2 of Chapter 82 of the 1995 Session Laws reads as rewritten:

"Sec. 2. This act applies only to the ~~Towns~~ Town of Apex ~~and Mooresville~~ and only with respect to annexation ordinances adopted on or before December 31, 2000. The authority this act grants to the Town of Apex does not apply to property in Chatham County; therefore, the Town of Apex may not annex property in Chatham County by satellite annexation if the area to be annexed, when added to the area

within the satellite corporate limits of the Town of Apex, exceeds the limit set by general law in G.S. 160A-58.1(b)(5)."

Section 3. G.S. 160A-58.1(b)(5) does not apply to the Town of Mooresville.

Section 4. G.S. 160A-58.4, as amended by Chapter 289 of the 1991 Session Laws, reads as rewritten:

"**§ 160A-58.4. Extraterritorial powers.**

Satellite corporate limits for areas annexed prior to January 1, 1997, shall be considered a part of the city's corporate limits for the purposes of extraterritorial land-use regulation pursuant to G.S. 160A-360, but not for purposes of abatement of public health nuisances pursuant to G.S. 160A-193. Satellite corporate limits for areas annexed on or after January 1, 1997, shall not be considered a part of the city's corporate limits for the purposes of extraterritorial land-use regulation pursuant to G.S. 160A-360. However, a city's power to regulate land use pursuant to Chapter 160A, Article 19, or to abate public health nuisances pursuant to G.S. 160A-193, shall be the same within satellite corporate limits as within its primary corporate limits."

Section 5. Section 4 of this act applies only to the Town of Mooresville.

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

EXPLANATION OF HOUSE BILL 698:
Morehead-Newport Annexations (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 10, 1997
SPONSOR: Representative Smith

House Bill 698 limits the authority of the Towns of Morehead City and Newport to annex noncontiguous areas and it modifies the laws relating to the annexation of noncontiguous areas by the Town of Mooresville.

G.S. 160A-58.1 governs the voluntary annexation of noncontiguous property. Property owners may petition a city for voluntary annexation of noncontiguous property if the property meets all of the following standards:

1. The nearest point on the proposed satellite corporate limits must be not more than 3 miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation is a subdivision, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city.

Section 1 of the bill modifies G.S. 160A-58.1(b)(2) for the Towns of Morehead City and Newport. Under the bill, the Towns may annex property within their extraterritorial planning jurisdiction, even if that property is closer to primary corporation limits of the other town than it is to the primary corporate limits of the annexing town.

Section 3 of the bill will allow the Town of Mooresville to annex property that is not contiguous with its primary corporate limits even though the annexed property will exceed 10% of the area within the primary city limits. Five other cities have also eliminated this standard altogether: Hickory, New Bern, Statesville, Kenly, and Troy. Several other cities have modified this standard.

Under current law, this standard has been modified for the Town of Mooresville for annexation ordinances adopted on or before December 31, 2000. Section 2 repeals this modification in lieu of the broader modification allowed by this bill. Section 4 of the bill provides that the increased satellite corporate limits of Mooresville will not increase the area within its extraterritorial land-use regulation authority.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 730

Short Title: Industrial Revenue Bond Changes. (Public)

Sponsors: Senator Ballance.

Referred to: Finance.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO THE ISSUANCE OF BONDS BY INDUSTRIAL FACILITIES AND POLLUTION CONTROL FINANCING AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159C-6 reads as rewritten:

"**§ 159C-6. Bonds.**

Each authority is hereby authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding ~~30 years from~~ 35 years after the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and conditions, as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature ~~shall appear~~ appears on any bonds or coupons ~~shall cease~~ ceases to be ~~such~~ that officer before the delivery of such bonds, such signature or such

facsimile shall nevertheless be valid and sufficient for all purposes the same as if ~~he~~ the officer had remained in office until such delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which ~~such bonds shall~~ the bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, ~~shall be~~ are less than such cost, additional bonds may in like manner be issued to provide the amount of ~~such~~ the deficiency. The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds ~~which shall~~ that become mutilated or ~~shall be~~ are destroyed or lost.

Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of ~~either thereof,~~ either, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same."

Section 2. G.S. 159C-7 reads as rewritten:

"**§ 159C-7. Approval of ~~project.~~ project by Secretary of Commerce.**

(a) Approval Required. -- No bonds may be issued by an authority unless the project for which ~~the issuance thereof~~ their issuance is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

(b) Findings. -- The Secretary shall not approve any proposed project unless ~~he shall make~~ the Secretary makes all of the following, applicable findings:

(1) In the case of a proposed industrial project,

a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage that (i) ~~which~~ is above the average weekly manufacturing wage paid in the county, or (ii) ~~which~~ is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State, and

b. That the proposed project will not have a materially adverse effect on the ~~environment;~~ environment.

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise ~~occur; and~~ occur.

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility ~~which~~ that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In any case (whether the proposed project is an industrial or a pollution control project), except a pollution control project for a public utility,

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and

c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (1)a. and (3)b. only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project. ~~In no case shall the Secretary of Commerce~~

(c) Public Hearing. -- The Secretary of Commerce shall not approve any proposed project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of

providing the Secretary with the views of the community. The notice shall also state that following the public hearing the authority intends to file an application for approval of the proposed project with the Secretary of Commerce, and that any person who has an objection or reservation with respect to the proposed project must file a written notice of the objection or reservation with the authority or with the Secretary of Commerce before the Secretary approves the project.

(d) Certificate of Department of Environment, Health, and Natural Resources. -- The Secretary of Commerce shall not make the findings required by subdivisions (1)b and (2) of this section unless ~~he shall have~~ the Secretary has first received a certification from the Department of Environment, Health, and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. ~~In no case shall the~~ The Secretary of Commerce shall not make the findings required by subdivision (2a) unless ~~he shall have~~ the Secretary has first received a certification from the Department of Environment, Health, and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment, Health, and Natural Resources within two working days after it is filed. The Department of Environment, Health, and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the authority consents to a longer period of time. In any case, for a project that is subject to the findings required by subdivision (b)(2) of this section, the Secretary shall approve or disapprove the proposed project within 10 days after receiving the required certification from the Department of Environment, Health, and Natural Resources required, unless the authority consents to a longer period of time. ~~In any case where the Secretary shall make~~

(e) Waiver of Wage Requirement. -- If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project except that prescribed in subparagraph (1)a of this section, the Secretary may, in ~~his~~ the Secretary's discretion, approve the proposed project if ~~he shall have~~ the Secretary has received (i) a resolution of the governing body of the county requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(f) Rules. -- To facilitate ~~his~~ review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. ~~In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for~~

~~the purpose of providing the Secretary directly with the views of the community to be affected.~~ The Secretary may also prescribe such forms and such rules ~~and regulations as he shall deem~~ as the Secretary considers reasonably necessary to implement the provisions of this section.

(g) Certificate of Approval. -- If the Secretary approves the proposed project, ~~he~~ the Secretary shall prepare a certificate of approval evidencing such approval and setting forth ~~his findings and~~ the findings. If no objections or reservations with respect to the proposed project were filed with the county at or before the public hearing or with the Secretary during the period of time that the application was pending, the certificate of approval shall become effective immediately upon issuance, the validity of the approval shall be conclusively presumed, and no court shall have the authority to inquire into the approval. In all other cases the Secretary shall cause ~~said~~ the certificate of approval to be published in a newspaper of general circulation within the county. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. ~~Such~~ The superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county and the Secretary of the Local Government Commission.

~~Such~~ The certificate of approval shall become effective immediately upon issuance where no publication is required, or shall become effective immediately following the expiration of ~~such~~ the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. ~~Such~~ The certificate shall expire one year after its date unless extended by the Secretary who shall not extend ~~such~~ the certificate unless ~~he shall again approve~~ the Secretary again approves the proposed project as provided in this ~~section.~~ section. If bonds are issued within that year pursuant to the authorization of this Chapter to pay all or part of the costs of the project, however, the certificate shall expire three years after the date of the first issuance of the bonds."

Section 3. G.S. 159C-8 reads as rewritten:

"**§ 159C-8. Approval of ~~bonds.~~ bonds by Local Government Commission.**

(a) No bonds may be issued by an authority unless the issuance thereof is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the Secretary of the Local Government Commission, and shall notify the Secretary of the Department of Commerce of such filing.

In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill

their obligations with respect to the financing agreement. In making such determination, the Commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged to secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

If the initial proposed operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the Local Government Commission may consider the matters required under subdivision (1) only with respect to the initial operator. The obligor shall be obligated to perform all of the duties of the obligor required hereunder during the term the bonds are outstanding. The Local Government Commission shall evaluate the obligor's ability to perform these duties without regard to whether the initial proposed operator of the project is expected to be the operator for the term of the bonds proposed to be issued. To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section.

(b) This section does not prohibit, prevent, or delay the distribution of a preliminary prospectus or offering circular before the Local Government Commission approves the bonds if the following conditions are met:

(1) The prospectus or circular is prepared by a nationally recognized underwriter counsel.

(2) The authority has issued bonds under this Chapter for the operator of the proposed project within 24 months before the application for approval was filed with the Local Government Commission."

Section 4. G.S. 159C-10 reads as rewritten:

"**§ 159C-10. Location of projects.**

Except as provided in this section, any project or projects of an authority shall be located within the boundaries of the county for which the authority was created. A portion or portions of any project including, but not limited to, any real or personal property or improvements necessary or convenient for the construction, maintenance, and operation of the project, may be located in a county or counties other than the county in which the principal part of the project is located so long as the additional portion or portions constitute functionally appurtenant or incidental facilities and the governing body of each other county in which the additional portion or portions of the project is or are located approves the project. In addition, if a project or a group of related projects is located in two or more adjacent counties, the project or related group of projects may be considered to be one project located in any one of the counties with the consent of each authority and each county for all purposes of this Chapter."

Section 5. G.S. 159C-19(a) reads as rewritten:

"(a) Each authority is hereby authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding ~~which shall~~ that have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

(1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded ~~shall~~ have been issued, and

(2) Paying all or any part of the cost of any additional project or projects.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect to the same shall be governed by the provisions of this Chapter ~~which~~ that relate to the issuance of bonds, insofar as such provisions may be appropriate ~~therefor.~~ therefor, including that any such bonds may have a single maturity within the limit prescribed by G.S. 159C-6.

The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the issuance of any refunding bonds; provided, however, that in the case where the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this Chapter, the approval required by G.S. 159C-7 shall not be required as to the project financed with the bonds to be refunded."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 730
Proposed Committee Substitute S730-PCS1829

Short Title: Industrial Revenue Bond Changes. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO THE ISSUANCE OF BONDS BY INDUSTRIAL FACILITIES AND POLLUTION CONTROL FINANCING AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159C-6, as amended by S.L. 1997-111, reads as rewritten:

"**§ 159C-6. Bonds.**

Each authority is authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding ~~30 years from~~ 35 years after the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and conditions, as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature ~~shall appear~~ appears on any bonds or coupons ~~shall cease~~ ceases to be ~~an~~

that officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the person had remained in office until such delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which the bonds were issued, and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, ~~shall be~~ are less than such cost, additional bonds may in like manner be issued to provide the amount of the deficiency.

The proceeds of bonds shall not be used to refinance the cost of a project. For the purposes of this section, a cost of a project is considered refinanced if both of the following conditions are met:

(1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.

(2) The original expenditure was paid more than 60 days before the authority took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

However, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of a project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the authority's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, regardless of whether or not they are incurred or paid within 60 days of the authority's action, does not include costs that are incurred incident to the commencement of the construction of a project, such as expenditures for land acquisition and site preparation. In any event, an expenditure originally paid before the authority took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may only be reimbursed from bond proceeds if the authority finds that reimbursing those costs from bond proceeds will promote the purposes of this Chapter.

The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds ~~which shall~~ that become mutilated or ~~shall be~~ are destroyed or lost.

Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of

any political subdivision or of any agency of ~~either thereof,~~ either, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same."

Section 2. G.S. 159C-7 reads as rewritten:

"**§ 159C-7. Approval of ~~project.~~ project by Secretary of Commerce.**

(a) Approval Required. -- No bonds may be issued by an authority unless the project for which ~~the issuance thereof~~ their issuance is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

(b) Findings. -- The Secretary shall not approve any proposed project unless ~~he shall make~~ the Secretary makes all of the following, applicable findings:

(1) In the case of a proposed industrial project,

a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage that (i) ~~which~~ is above the average weekly manufacturing wage paid in the county, or (ii) ~~which~~ is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State, and

b. That the proposed project will not have a materially adverse effect on the ~~environment;~~ environment.

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise ~~occur; and~~ occur.

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility ~~which~~ that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In any case (whether the proposed project is an industrial or a pollution control project), except a pollution control project for a public utility,

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and

c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (1)a. and (3)b. only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project. ~~In no case shall the Secretary of Commerce~~

(c) Public Hearing. -- The Secretary of Commerce shall not approve any proposed project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the authority intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d) Certificate of Department of Environment, Health, and Natural Resources. -- The Secretary of Commerce shall not make the findings required by subdivisions (1)b and (2) of this section unless ~~he shall have~~ the Secretary has first received a certification from the Department of Environment, Health, and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. ~~In no case shall the~~ The Secretary of Commerce shall not make the findings required by subdivision (2a) unless ~~he shall have~~ the Secretary has first received a certification from the Department of Environment, Health, and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment, Health, and Natural Resources. The Department of Environment, Health, and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the authority consents to a longer period of time. ~~In any case where the Secretary shall make~~

(e) Waiver of Wage Requirement. -- If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project except that prescribed in subparagraph (1)a of this section, the Secretary may, in ~~his~~ the Secretary's discretion, approve the proposed project if ~~he shall have~~ the Secretary has received (i) a resolution of the governing body of the county requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(f) Rules. -- To facilitate ~~his~~ review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. ~~In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to be affected.~~ The Secretary may also prescribe such forms and such rules ~~and regulations as he shall deem~~ as the Secretary considers reasonably necessary to implement the provisions of this section.

(g) Certificate of Approval. -- If the Secretary approves the proposed project, ~~he~~ the Secretary shall prepare a certificate of approval evidencing such approval and setting forth ~~his~~ the findings and shall cause ~~said~~ the certificate of approval to be published in a newspaper of general circulation within the county. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. ~~Such~~ The superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county and the Secretary of the Local Government Commission.

~~Such~~ The certificate of approval shall become effective immediately following the expiration of ~~such~~ the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. ~~Such~~ The certificate shall expire one year after its date unless extended by the Secretary who shall not extend ~~such~~ the certificate unless ~~he shall again approve~~ the Secretary again approves the proposed project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Chapter to pay all or part of the costs of the project, however, the certificate shall expire three years after the date of the first issuance of the bonds."

Section 3. G.S. 159C-10 reads as rewritten:

"**§ 159C-10. Location of projects.**

Except as provided in this section, any project or projects of an authority shall be located within the boundaries of the county for which the authority was created. A portion or portions of any project including, but not limited to, any real or personal

property or improvements necessary or convenient for the construction, maintenance, and operation of the project, may be located in a county or counties other than the county in which the principal part of the project is located so long as the additional portion or portions constitute functionally appurtenant or incidental facilities and the governing body of each other county in which the additional portion or portions of the project is or are located approves the project. In addition, if a project or a group of related projects is located in two or more adjacent counties, the authority created for any one of the counties may issue bonds as provided in G.S. 159C-6 for the purpose of paying all or any part of the cost of the project or group of related projects if the following conditions are met:

(1) The board of commissioners of each county in which the project or group of related projects is located has consented.

(2) The governing body of the authority created for each county in which the project or group of related projects is located has consented.

(3) The bonds are issued in compliance with all other provisions of this Chapter."

Section 4. G.S. 159C-19(a) reads as rewritten:

"(a) Each authority is hereby authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding ~~which shall~~ that have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

(1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded ~~shall~~ have been issued, and

(2) Paying all or any part of the cost of any additional project or projects.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect to the same shall be governed by the provisions of this Chapter ~~which~~ that relate to the issuance of bonds, insofar as such provisions may be appropriate ~~therefor.~~ therefor, including that any such bonds may have a single maturity within the limit prescribed by G.S. 159C-6.

The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the issuance of any refunding bonds; provided, however, that in the case where the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this Chapter, the approval required by G.S. 159C-7 shall not be required as to the project financed with the bonds to be refunded."

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

EXPLANATION OF SENATE BILL 730:
Industrial Revenue Bond Changes (PCS)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: June 9, 1997
SPONSOR: Senator Ballance

Senate Bill 730 makes the following changes to the law authorizing county authorities to issue industrial revenue bonds to finance qualifying industrial or pollution control projects for private manufacturing firms:

1. It increases the maximum term of the bonds from 30 to 35 years, and provides that refunding bonds may have the same maximum term. (Sections 1 and 4)
2. It requires a county to hold a public hearing before asking the Secretary of Commerce to approve the issuance of bonds for a proposed project. Under current law, the Secretary of Commerce has discretion to request the county authority to hold a public hearing; by rule, the Secretary requires a public hearing to be held in every case. (Section 2)
3. It imposes a seven-day turn-around time on DEHNR's required certification that a proposed industrial project will not have an adverse effect on the environment or that a proposed pollution control project will have a favorable impact on the environment or will prevent or diminish pollution. This certification is necessary before the Secretary of Commerce can approve bonds for a proposed project. (Section 2)
4. It provides that the Secretary of Commerce's certificate of approval, which is valid for one year, will remain valid for three years after bonds are first issued if bonds are issued during the initial one-year period of validity. This change will allow a company to get certification of a large project and then issue bonds over a three-year period. (Section 2)
5. It provides that if a proposed project is located in two or more counties, the county authority of any of those counties may issue the bonds if each affected county and county authority has consented. (Section 3)

Industrial Revenue Bonds offer companies engaged in manufacturing long-term debt financing at interest rates substantially below the current prime

rate. There are three types of bonds: tax-exempt bonds for industrial projects, tax-exempt bonds for pollution control projects, and federally taxable bonds for industrial projects. Under the program, a county authority may enter into a financing agreement with a company to provide revenue bond proceeds to the company to be used to finance capital expenditures, such as fixed assets, land, buildings, and equipment. The amounts payable by the company to the authority under the financing agreement must be sufficient to pay all of the principal and interest on the bonds.

Before bonds can be issued, the proposed project must be approved by the Secretary of Commerce and the bonds must be approved by the Local Government Commission. Bond proceeds cannot be used to refinance existing debt or as venture capital. Nor can they be used for a project that will result in the closing of another facility in North Carolina. The proposed project must generate a number of jobs that is commensurate with the cost of the project and will have a measurable impact on the local economy.

Typical industrial projects are new or expanded product manufacturing facilities, distribution centers, and research and development facilities necessary to the manufacturing process. To qualify for bonds for an industrial project, the company must agree to pay its employees at least the average weekly manufacturing wage of the county or the State average weekly manufacturing wage plus 10%. This wage requirement may be waived if the project is to be located in an area of especially severe unemployment.

After a project has been approved by the Department of Commerce, there is no mechanism to follow up the make sure the standards for job creation and wage level are actually met. The Department of Commerce has not been provided the resources that would be necessary for this type of oversight and auditing.

The federal government designates the maximum amount of tax-exempt industrial revenue bonds each state may issue, based on population. The 1997 amount for North Carolina is $377 million. For a single project, tax-exempt bonds may be used to finance capital expenditures of no more than $10 million for a single project over a six-year period. In addition, a company may not have more than $40 million in tax-exempt bonds outstanding nationwide at any given time.

The following chart shows the history of Industrial Revenue Bonds, both

taxable and tax-exempt:

Year	Projects	($Mil)
1987	11	44.05
1988	19	70.00
1989	45	265.25
1990	20	103.30
1991	18	223.40
1992	11	53.10
1993	7	88.00
1994	10	46.40
1995	29	380.60
1996	26	153.20
to date		
1997	18	$110.73

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1012*

Short Title: Publication of Appellate Decisions. (Public)

Sponsors: Senators Rucho; and Odom.

Referred to: Judiciary.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PARTIES WITH THE RIGHT TO THE PUBLICATION OF ANY OPINION ISSUED BY THE COURT OF APPEALS.

The General Assembly of North Carolina enacts:

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

"**§ 7A-6.1. Right to publication of Court of Appeals opinions.**

When a case is decided by the Court of Appeals without publication of an opinion under Rule 30(e) of the Rules of Appellate Procedure, either party may, within 30 days of the issuance of the court's decision, pay to the Judicial Department an amount equal to the cost of publication and providing storage for the publishing of the opinion, and the court's opinion shall be published and treated in all respects as a published opinion. The amount paid to the Judicial Department shall be set by the Judicial Department based upon a methodology developed by the Department for reflecting the actual cost of publication and storage of additional opinions, and may not exceed the sum of five hundred dollars ($500.00)."

Section 2. This act is effective when it becomes law and applies to decisions issued on or after that date.

Proposal to amend Rule 30(e)(1) by adding the underlined paragraph.

Rule 30 Oral Argument

(e) Decision of Appeal Without Publication of an Opinion.

(1) In order to minimize the cost of publication and of providing storage space for the published reports, the Court of Appeals is not required to publish an opinion on every decided case. If the panel which hears the case determines that the appeal involves no new legal principles and that an opinion, if published, would have no value as a precedent, it may direct that no opinion be published.

Within 20 days after an unpublished opinion is filed with the Clerk of the Court of Appeals, any party to the appeal may file with the court a motion to publish the opinion. The motion shall set forth the new legal principles involved, any value as precedent or any other basis, stated with particularity, upon which the party asserts that the opinion should be published. A response may be filed by any other party to the appeal within 10 days after service of the motion.

Constitutionality of statutes which are in conflict with
provisions in the Rules of Appellate Procedure

The North Carolina Supreme Court has held on numerous occasions that statutes which are in conflict with provisions of the Rules of Appellate Procedure violate the Constitution of North Carolina and are therefore ineffective.

In *State v. Elam*, 302 N.C. 157, 273 S.E.2d 661 (1981), Justice Huskins wrote:

> Subsection (6) of G.S. 15A-1446(d) is in direct conflict with Rules 10 and 14(b)(2) of the Rules of Appellate Procedure and our case law on the point. The Constitution of North Carolina provides that "[t]he Supreme Court shall have exclusive authority to make rules of practice and procedure for the Appellate Division." N.C. Const. Art. IV § 13(2). The General Assembly was without authority to enact G.S. 15A-1446(d)(6). It violates our Constitution. Our Rule 14(b)(2) and our case law are authoritative on this point.

Id. at 160, 273 S.E.2d at 664.

This rule of constitutional interpretation has been followed on many occasions by both the North Carolina Supreme Court and Court of Appeals. For examples, see *State v. Spaugh*, 321 N.C. 550, 364 S.E.2d 368 (1988), and *State v. Bradley*, 91 N.C. App. 559, 373 S.E.2d 130 (1988).

Thus, to the extent HB 1042 and SB 1012 (allowing a party to an appeal to decide whether an opinion shall be published) is in conflict with Rule 30(e) of the Rules of Appellate Procedure promulgated by the Supreme Court (providing that the panel hearing the case in the Court of Appeals shall decide whether to publish the opinion), HB 1042/SB 1012 would appear to violate Article IV, § 13(2) of the Constitution of North Carolina and would be ineffective.

Supreme Court has no original jurisdiction over claims against the State, and the General Assembly has no authority to confer such jurisdiction upon it. Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

The Supreme Court's jurisdiction over claims against the State is the same as over all other claims. Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

Trial Court Must Adjudicate Claims against State. — The appropriate trial court of the General Court of Justice now has original jurisdiction to adjudicate claims against the State. Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

Repeal and Unconstitutionality of § 7A-25. — Section 7A-25 was rendered null and void when the electorate approved revised N.C. Const., Art. IV, which deleted the provision granting the Supreme Court original jurisdiction of claims against the State. Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

Even if the General Assembly did not intend to repeal § 7A-25, providing for original jurisdiction of claims against the State in the Supreme Court, by ratification of the 1971 revision of N.C. Const., Art. IV, § 7A-25 is unconstitutional. Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

As to the original jurisdiction formerly conferred upon the Supreme Court over claims against the State, see Bledsoe v. State, 64 N.C. 392 (1870); Sinclair, Owens & Brown v. State, 69 N.C. 47 (1873); Clements v. State, 76 N.C. 199 (1877); Horne v. State, 82 N.C. 382 (1880); Bain v. State, 86 N.C. 49 (1882); Baltzer v. State, 104 N.C. 265, 10 S.E. 153 (1889); Burton v. Furman, 115 N.C. 166, 20 S.E. 443 (1894); Cowles v. State, 115 N.C. 173, 20 S.E. 384 (1894); Miller v. State, 134 N.C. 270, 46 S.E. 514 (1904); Carpenter v. Atlanta & C. Air Line Ry., 184 N.C. 400, 114 S.E. 693 (1922); Calkins Dredging Co. v. State, 191 N.C. 243, 131 S.E. 665 (1926); Lacy v. State, 195 N.C. 284, 141 S.E. 886 (1928); Rotan v. State, 195 N.C. 291, 141 S.E. 733 (1928); Warren v. State, 199 N.C. 211, 153 S.E. 864 (1930); Cohoon v. State, 201 N.C. 312, 160 S.E. 183 (1931); Dalton v. State Hwy. & Pub. Works Comm'n, 223 N.C. 406, 27 S.E.2d 1 (1943); Sale v. State Hwy. & Pub. Works Comm'n, 242 N.C. 612, 89 S.E.2d 290 (1955).

Sec. 13. Forms of action; rules of procedure.

(1) *Forms of Action.* There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) *Rules of Procedure.* The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

History. — The provisions of this section are similar to those to Art. IV, § 11, Const. 1868, as that article was rewritten in 1962.

Legal Periodicals. — For article, "The 1980 Amendments to the Federal Rules of Civil Procedure and Proposals for North Carolina Practice," see 16 Wake Forest L. Rev. 915 (1980).

Administrative History

Adopted: 13 June 1975.

Amended: 3 March 1982—29(a)(1); 3 September 1987—29(a)(1); 26 July 1990—29(b)—effective 1 October 1990.

RULE 30. ORAL ARGUMENT

(a) Order and Content of Argument. The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Oral arguments should complement the written briefs, and counsel will therefore not be permitted to read at length from briefs, records, and authorities.

(b) Time Allowed for Argument.

(1) *In General.* Ordinarily a total of thirty minutes will be allowed all appellants and a total of thirty minutes will be allowed all appellees for oral argument. Upon written or oral application of any party, the court for good cause shown may extend the times limited for argument. Among other causes, the existence of adverse interests between multiple appellants or between multiple appellees may be suggested as good cause for such an extension. The court of its own initiative may direct argument on specific points outside the times limited. Counsel is not obliged to use all the time allowed, and the court may terminate argument whenever it considers further argument unnecessary.

(2) *Numerous Counsel.* Any number of counsel representing individual appellants or appellees proceeding separately or jointly may be heard in argument within the times herein limited or allowed by order of court. When more than one counsel is heard, duplication or supplementation of argument on the same points shall be avoided unless specifically directed by the court.

(c) Non-appearance of Parties. If counsel for any party fails to appear to present oral argument, the court will hear argument from opposing counsel. If counsel for no party appears, the court will decide the case on the written briefs unless it orders otherwise.

(d) Submission on Written Briefs. By agreement of the parties, a case may be submitted for decision on the written briefs; but the court may nevertheless order oral argument prior to deciding the case.

(e) Decision of Appeal Without Publication of an Opinion.

(1) In order to minimize the cost of publication and of providing storage space for the published reports, the Court of Appeals is not required to publish an opinion in every decided case. If the panel which hears the case determines that the appeal involves no new legal principles and that an opinion, if published, would have no value as a precedent, it may direct that no opinion be published.

(2) Decisions without published opinion shall be reported only by listing the case and the decision in the Advance Sheets and the bound volumes of the Court of Appeals Reports.

(3) A decision without a published opinion is authority only in the case in which such decision is rendered and should not be cited in any other case in any court for any purpose, nor should any court consider any such decision for any purpose except in the case in which such decision is rendered.

(f) Pre-argument Review; Decision of Appeal Without Oral Argument.

(1) At any time that the Supreme Court concludes that oral argument in any case pending before it will not be of assistance to the Court, it may dispose of the case on the record and briefs. In those cases, counsel will be notified not to appear for oral argument.

(2) The Chief Judge of the Court of Appeals may from time to time designate a panel to review any pending case, after all briefs are filed but before argument, for decision under this rule. If all of the judges of the panel to which a pending appeal has been referred conclude that oral argument will not be of assistance to the Court, the case may be disposed of on record and briefs. Counsel will be notified not to appear for oral argument.

Administrative History

Adopted: 13 June 1975.

Amended: 18 December 1975—(e); 3 May 1976—(f); 5 February 1979—(e); 10 June 1981—(f)—to become effective 1 July 1981.

RULE 31. PETITION FOR REHEARING

(a) Time for Filing; Content. A petition for rehearing may be filed in a civil action within 15 days after the mandate of the court has been issued. The petition shall state with particularity the points of fact or law which, in the opinion of the petitioner, the court has overlooked or misapprehended, and shall contain such argument in support of the petition as petitioner desires to present. It shall be accompanied by a certificate of at least two attorneys who for periods of at least five years respectively, shall have been members of the bar of this State and who have no interest in the subject of the action and have not been counsel for any party to the action, that they have carefully examined the appeal and the authorities cited in the decision, and that they consider the decision in error on points specifically and concisely identified. Oral argument in support of the petition will not be permitted.

(b) How Addressed; Filed. A petition for rehearing shall be addressed to the court which issued the opinion sought to be reconsidered. Two copies thereof shall be filed with the clerk.

The State's evidence at trial tended to show, *inter alia*, that the victim lived with her parents in September of 1985, which was the month prior to her thirteenth birthday. The defendant is her father. The victim testified that she came home from school and was watching television in the family living room. The defendant was the only other person in the home at the time.

The defendant asked the victim to come to his bedroom. When she entered the bedroom, the defendant was naked and lying on the bed. He told the victim to take her clothes off and lie down with him. She did as the defendant, her father, commanded and he committed sexual intercourse and sodomy upon her. She cried but the defendant yelled at her to be quiet. After completing the acts of sexual intercourse and sodomy upon the victim, the defendant told her to dress and to make the bed. He instructed her not to tell anyone about what had happened, or she "could get hurt."

The defendant offered evidence tending to show that neither his wife nor his other children had any reason to believe that the defendant had engaged in any sexual activities with the victim. The defendant testified that he had never had sexual relations with the victim at any time. He specifically denied that he had sex with the victim on an afternoon in September of 1985.

[1] Appellate counsel for the defendant first contends that the evidence as submitted to the jury was insufficient with regard to the victim's age to support the defendant's conviction for first degree rape. Although the defendant's counsel at trial made a motion for dismissal at the close of the State's evidence, that motion was waived when the defendant introduced evidence. N.C.G.S. § 15-173 (1983); App. R. 10(b)(3). Trial counsel for the defendant did not renew the motion to dismiss at the close of all of the evidence. Although N.C.G.S. § 15A-1446(d)(5) provides that questions of insufficiency of the evidence may be the subject of appellate review, even when no objection or motion has been made at trial, North Carolina Rule of Appellate Procedure 10(b)(3) provides that a defendant who fails to make a motion to dismiss at the close of all of the evidence may not attack on appeal the sufficiency of the evidence at trial. We have specifically held in this regard that: "To the extent that N.C.G.S. 15A-1446(d)(5) is inconsistent with N.C.R. App. P. 10(b)(3), the statute must fail." *State*

v. Stocks, 319 N.C. 437, 439, 355 S.E. 2d 492, 493 (1987). Accordingly, we reject this contention by appellate counsel.

[2] The defendant next contends that he is entitled to a new trial because the trial court failed to conduct a voir dire examination to determine the competency of the victim as a witness and failed to make findings of fact and conclusions in this regard. We do not agree.

In support of his contention that the trial court was required to conduct a voir dire hearing and make findings and conclusions as to the competency of the victim as a witness, the defendant relies on the recent statement of this Court that:

> The obligation of a trial judge to make a preliminary determination of a witness's competency is embodied in Rules 104(a) and 601(a) and (b) of the new North Carolina Evidence Code. . . . Underlying the evidence rules as codified and the traditional case law analysis is the assumption that, in exercising his discretion in ruling on the competency of a child witness to testify, a trial judge must rely on his personal observation of the child's demeanor and responses to inquiry on *voir dire* examination. . . . Obviously, there can be no informed exercise of discretion where a trial judge merely adopts the stipulations of counsel that a child is not competent to testify without ever having personally examined or observed the child on *voir dire*. The competency of a child witness to testify at trial is not a proper subject for stipulation of counsel absent the trial judge's independent finding pursuant to his opportunity to personally examine or observe the child on *voir dire*.

State v. Fearing, 315 N.C. 167, 173-74, 337 S.E. 2d 551, 555 (1985). In *Fearing* we held that the trial court erred in relying on a stipulation of counsel as to the competency of a child witness, rather than relying on its own observation of the child in exercising its discretion in determining the child's competency to testify. As can be seen from the foregoing quotation from *Fearing*, our primary concern was that the trial court exercise its independent discretion in deciding competency after observation of the child and not the particular procedure whereby the court conducted its observation. *Fearing* is not authority for the proposition that a defendant is entitled to a new trial in every instance in which a

Mack, however, the Court sought to distinguish *Massey* by finding that N.C.G.S. § 15A-1446(d) waives the requirement for an objection. The statute provides that:

> Errors based upon the following grounds . . . may be subject to appellate review even though no objection . . . has been made in the trial division.
>
> * * * *
>
> (5) The evidence was insufficient as a matter of law.

This reasoning may be doubtful because N.C.G.S. § 15A-1446 (d)(5) was not intended to be used in a sentencing context, but rather was designed to allow a defendant to question the sufficiency of the evidence to support a verdict against him without objecting or excepting at trial to the trial court's denial of his motion to dismiss. There is no authority to support the Court's extension of the statute to the sentencing context. We do note, however, that our Supreme Court has found that when N.C.G.S. § 15A-1446(d)(5) attempts to allow for the appeal on the sufficiency of the evidence, absent a motion or objection at trial, it is inconsistent with the provisions of Appellate Rule 10(b)(3), and as such that provision must fail. *See State v. Stocks*, 319 N.C. 437, 355 S.E. 2d 492 (1987). There is no authority to revive the statute for sentencing purposes.

Nevertheless, assuming *arguendo* that N.C.G.S. § 15A-1446 (d)(5) is applicable to sentencing issues, defendant has failed to properly preserve his exceptions for review. Pursuant to Appellate Rule 10(b)(2) in order to preserve a right to appeal a party must object to the jury charge, or any omission therefrom, before the jury retires. The rule also explicitly requires a party to object to the failure of the trial court to make necessary findings and conclusions in order to advance these issues on appeal.

The purpose of this rule appears to be to provide the trial court an opportunity to correct any obvious defects and thereby eliminate the need for an appeal and a new proceeding. Implicit in this rule is also an obligation on a party to object to erroneous findings made by the trial court. This requirement is consistent with the spirit of the rule which can be ascertained from the requirements for objection with regard to errors in the jury charge. Therefore, insofar as the provisions of N.C.G.S. § 15A-1446(d)(5)

allows a party to raise arguments regarding the sufficiency of the evidence to support a finding of fact at sentencing, it is inconsistent with the spirit and purpose of Rule 10(b)(2). Statutes which are in conflict with the Rules of Appellate Procedure are ineffective. *See State v. Elam*, 302 N.C. 157, 273 S.E. 2d 661 (1981). Therefore, N.C.G.S. § 15A-1446(d)(5) is ineffective to override the purpose of Rule 10(b)(2) and the case law set forth in *Massey*. Thus, defendant waived his right to appeal any possible error regarding the district attorney's statements at sentencing by failing to object to them.

No error.

Chief Judge HEDRICK and Judge WELLS concur.

CLARA S. CUMMINGS, TRUSTEE UNDER THE WILL OF PEGGY FOX SNYDER v. CHARLES WILLIAM SNYDER, AND LISA KIRBY, GUARDIAN AD LITEM FOR BRADLEY SNYDER

No. 8810SC269

(Filed 18 October 1988)

Wills § 28.4; Trusts § 5— marital home held in trust for benefit of husband—termination clause—construction

In an action to terminate a life estate in respondent which had been created by his deceased wife's will and held in trust for his benefit during his lifetime, the only logical interpretation of the language "in the event my said husband shall fail to reside in my said residence for at least six consecutive months during any five-year period during the term of this trust, then it shall be deemed that he thereby released his lifetime right to reside in the residence and my trustee shall then have the power to lease or sell my said residence . . ." is that respondent need only reside in the home for a single six consecutive month period during any five-year period. The trial court's order terminating the life estate was remanded for entry of judgment in favor of respondent.

Judge WELLS dissenting.

APPEAL by petitioner from *Bowen, Judge*. Order entered 8 October 1987 in Superior Court, WAKE County. Heard in the Court of Appeals 26 September 1988.

EXPLANATION OF SENATE BILL 1012:
Publication of Appellate Decisions

TO: Senate Finance Committee
FROM: Robin S. Johnson, Staff Attorney
DATE: June 10, 1997
SPONSOR: Senator Rucho

SENATE BILL 1012 would allow either party in a case decided by the Court of Appeals to request publication of the Court's opinion. Once published, the opinion is to be treated in all respects as a published opinion. The party seeking publication must pay, within 30 days of the issuance of the court's opinion, a fee to the Judicial Department. The fee, which cannot exceed $500, would be an amount based upon the Department's methodology that reflects the actual cost of publication and storage. The bill becomes effective when it becomes law and applies to decisions issued on or after that date.

Under Rule 30(e) of the Rules of Appellate Procedure, the Court of Appeals may issue an unpublished opinion when the three-judge panel that hears the case determines that the appeal involves no new legal principles and that the opinion, if published, would have no precedent value. This Rule also provides that an unpublished decision is authority only in the case in which the decision is rendered and shall not be cited in any other case in any court for any purpose, nor should any court consider an unpublished decision for any purpose except in the case in which the decision is rendered. Senate Bill 1012 appears to change the effect of opinions that, absent this bill, would be unpublished. The bill would require these opinions to be given the same effect as any other published opinion.

Currently, most opinions of the Court of Appeals are not published. The opinions themselves must be unanimous and the decision not to publish them is also unanimous. In addition, either party may appeal the decision not to publish an opinion. Unpublished opinions are public records and are listed in published reports that identify the names of the parties and the results of the appeals. Also, copies of unpublished opinions are sent to the parties, are available to the public, including the media, and are sent to any person who requests a copy.

Constitutional Issue: Under the North Carolina Constitution, the Supreme Court has "exclusive authority to make rules of procedure and practice for the Appellate Division." As a result, the courts have consistently refused to uphold statutes that enact appellate rules or that are inconsistent with appellate rules. Senate Bill 1012 appears to contradict an appellate rule or procedure and is likely to be found unconstitutional, if enacted in its present form.

Constitutionality of statutes which are in conflict with
provisions in the Rules of Appellate Procedure

The North Carolina Supreme Court has held on numerous occasions that statutes which are in conflict with provisions of the Rules of Appellate Procedure violate the Constitution of North Carolina and are therefore ineffective.

In *State v. Elam*, 302 N.C. 157, 273 S.E.2d 661 (1981), Justice Huskins wrote:

> Subsection (6) of G.S. 15A-1446(d) is in direct conflict with Rules 10 and 14(b)(2) of the Rules of Appellate Procedure and our case law on the point. The Constitution of North Carolina provides that "[t]he Supreme Court shall have exclusive authority to make rules of practice and procedure for the Appellate Division." N.C. Const. Art. IV § 13(2). The General Assembly was without authority to enact G.S. 15A-1446(d)(6). It violates our Constitution. Our Rule 14(b)(2) and our case law are authoritative on this point.

Id. at 160, 273 S.E.2d at 664.

This rule of constitutional interpretation has been followed on many occasions by both the North Carolina Supreme Court and Court of Appeals. For examples, see *State v. Spaugh*, 321 N.C. 550, 364 S.E.2d 368 (1988), and *State v. Bradley*, 91 N.C. App. 559, 373 S.E.2d 130 (1988).

Thus, to the extent HB 1042 and SB 1012 (allowing a party to an appeal to decide whether an opinion shall be published) is in conflict with Rule 30(e) of the Rules of Appellate Procedure promulgated by the Supreme Court (providing that the panel hearing the case in the Court of Appeals shall decide whether to publish the opinion), HB 1042/SB 1012 would appear to violate Article IV, § 13(2) of the Constitution of North Carolina and would be ineffective.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1012

SHORT TITLE: Publication of Appellate Decisions

SPONSOR(S): Senators Rucho and Odom

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Judicial Expenditures					
Recurring	$84,864	$102,287	$102,287	$102,287	$102,287
Nonrecurring	$6,700				
Estimated Revenues	$30,720	$30,720	$30,720	$30,720	$30,720
Net Expenditures	$60,844	$71,567	$71,567	$71,567	$71,567

POSITIONS: Assistant Appellate Reporter

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Department

EFFECTIVE DATE: When bill becomes law and applies to decisions issued on or after that date.

BILL SUMMARY: *TO PROVIDE PARTIES WITH THE RIGHT TO THE PUBLICATION OF ANY OPINION ISSUED BY THE COURT OF APPEALS.* Adds new GS 7A-6.1, permitting any party to an action to pay Judicial Department costs (not to exceed $500) for printing, publishing, and storing a court opinion when the Court of Appeals decides a case without publication of an opinion under Rule 30(e).

ASSUMPTIONS AND METHODOLOGY: Judicial Department

The Judicial Department anticipates this bill would have some fiscal impact on the court system. Currently, Court of Appeals opinions are not published when the Court determines "that the appeal involves no new legal principles and that an opinion, if published, would have no value as precedent." The proposed bill would allow any party to require publication of any opinion upon paying up to $500 of the costs of publication. The fiscal impact would be twofold: (1) There would be a need for one additional staff person in the Appellate Reporter Office (who

administers publication of appellate opinions); and, (2) A need for additional operating funds to publish the additional opinions.

Number of Opinions

Presently, most Court of Appeals opinions are *not* published. The Clerk of the Court of Appeals reported that of the 1,399 opinions filed in 1996, approximately 959, or nearly 70%, were not published.

It is very difficult to determine how often parties would demand that opinions be published, although there appear to be several factors which seem to militate against publication. First, unpublished opinions are public records. The Court sends copies to the parties, any person may request a copy, and the media can report on cases decided by unpublished opinion. Published reports already list the cases decided by unpublished opinion, identifying the parties and briefly stating the results of the appeals. In addition, many parties, especially losing parties, may not see a large incentive to have an opinion published. A dissatisfied party may seek review by the Supreme Court or may by motion ask the Court of Appeals to reconsider its determination that an opinion will not be published. (Motions that request publication of an opinion are most often granted, but such motions are infrequent, some twelve per year.) Finally, a dissatisfied party might prefer that the decision not be published, since forcing publication would give precedential force to an opinion with which the party disagrees.

On the other hand, there are factors which may contribute to parties wanting to have opinions published. For instance, there may be some losing parties who believe that publication is necessary to hold the Court's decision up to greater public scrutiny. In addition, there may be many prevailing parties and/or their attorneys who would want an opinion to be published because they prevailed.

For purposes of this fiscal note, it is estimated that parties would request publication for 10% of the opinions that are not published now which would total approximately 96 additional opinions each year (959 opinions not published last year). These 96 additional opinions would result in an 22% increase of the number of published opinions.

Estimated Fiscal Impact

Personnel

The Appellate Reporter Office prepares appellate opinions for publication (both for the Court of Appeals and the Supreme Court). Currently, there are two full-time and one part-time Assistant Appellate Reporters, who prepare the headnotes and other legal references for all appellate opinions. (Headnotes are succinct summaries of the legal issues decided by the Court, printed for convenient reference before each opinion; the reports also include an analytical index of legal issues.) Additional staff consist of two Editorial Assistants who handle all of the non-legal indexing (including case and attorney lists), and all other administrative tasks for publication.

Based on consultations with the Clerk of the Court of Appeals, the Department estimates the potential 22% increase in the number of published opinions would necessitate one Assistant Appellate Reporter position. The costs for this position are $54,144 recurring (position effective 10/1/97) and $6,700 nonrecurring for FY 1997-98 and $71,567 recurring for future years.

Costs of Publication

Appellate opinions are published in both "advance sheets" and later, in permanent bound volumes. (Advance sheets are pamphlet-like publications which are produced so that the legal profession and public have prompt access to appellate opinions which under present law the Court has determined to have value as legal precedent.) Once enough opinions have been issued, a bound volume is produced, and advance sheets are generally discarded. The Judicial Branch contracts for the printing of the appellate reports and advance sheets. Based on the most recent three editions of the advance sheets and bound volumes, the costs for printing and distribution of Court of Appeals opinions is $64.00 *per page*. The average length of an unpublished opinion is about five printed pages. Thus, printing the 96 additional opinions would cost approximately $30,720 each year.

Potential Revenues

Based on five pages per opinion, the average cost to a party would be $320 (five pages times $64 per page), which is less than the maximum of $500 that a party could be charged under this bill. However, in instances where an opinion exceeds 8 pages in length, the party would not pay the full costs of publication ($500 divided by $64 per page is 7.8 pages). It is probable that some opinions would exceed eight pages. For purposes of this fiscal note, it is estimated that revenues will equal $320 per request ($64 X 5 pages), thus totaling about $30,720 in fees collected each year ($320 X 96 opinions).

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Charles Perusse
APPROVED BY: Tom L. Covington**TomC**
DATE: May 9, 1997

Attachment # 2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6-10-97

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Josh Lecurt	NC Ct of Appeals
Gerald Arnold	NC Ct of Apps
Jan Ellington	DEHNR
Harold Lide	Commerce
Angie Harris	"
Ron Levine	DEHNR
Ted Bennett	CITY OF RALEIGH
Stuart Dixon	N.C. Natural Gas Corp
Joe Pennelin	Piedmont Natural Gas Company
Andy Romanet	N.C.L.M.
Bob Hyatt	Dept of State Treas.
Tom Killian	Moore-Van Allen
[illegible]	"

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6-10-97

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Runt	NCFPL
Alice Garland	Electricities
Katherine Daves	"
Paul Gwin	OSBM

Attachment # 3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, June 10, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**604** Morehead-Newport ETJ Authority.
Sequential Referral: None
Recommended Referral: None

H.B.(SCS)**698** Morehead-Newport Annexations.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **730** Industrial Revenue Bond Changes.
Draft Number: PCS1829
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: S.B. 730 H.B 604 and H.B. 698

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 11, 1997

12:00 NOON - ROOM 544 LOB

The Senate Finance Committee met. There were 24 members of the Committee present. Senator David W. Hoyle called the meeting to order and introduced the Pages, they are Same Rose from Durham, N. C., sponsored by Senator Basnight, Robert Lee from Murfreesboro, N. C., sponsored by Senator Ballance, Emily Moore from Thomasville, N. C., sponsored by Senator Cochrane.

H. B. 342 - Mecklenburg Bid Limit Increased

Representative Alexander came to explain the bill. Senator Soles moved for a "favorable" report, motion passed.

H. B. 989 - School Administrator's Fee

Representative Rogers came and explained the bill. Senator Lee moved for a "favorable" report, motion passed.

S. B. 938 - Construction Worker Training Credit

Senator Cochrane came to explain the bill. She moved for adoption of a proposed committee substitute, motion passed. Senator Kerr sent forth an amendment to make a technical correction in the bill and moved for the amendment's adoption, motion passed. Senator Kerr moved for a "favorable" report with amendment to be rolled into adopted committee substitute for a new committee substitute, motion passed with notation that bill be re-referred to the Senate Appropriations Committee.

H. B. 476 - Vital Records Access

Representative Hurley came to explain the bill. Senator Lee moved for adoption of a proposed committee substitute, motion passed. Mr. Tory McLean, State Registrar, spoke on the bill. Mr. Ken Eudy with the N. C. Press Association spoke on the bill. Senator Conder made a motion for a "favorable" report, motion passed.

S. B. 1037 - N. C. Railroad Act

Senator Kerr came to explain the bill. Senator Hoyle stated that bill would be explained and discussed in committee but would not be voted on today.

NOTE: H. B. 340 was removed from the Agenda at the request of sponsor, Rep. Moore.

Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report is Attachment # 3

Attachment # 1

AGENDA

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 11, 1997

12:00 NOON - ROOM 544

SB 938 - Construction Worker Training Credit - Sen. Jordan

SB 1037 - N. C. Railroad Act - Sen. Kerr

HB 340 - Kannapolis Property Acquisitions - Rep. Moore

HB 342 - Mecklenburg Bid Limit Increased - Rep. Alexander

HB 989 - School Administrator's Fee - Rep. Rogers

HB 476 - Vital Records Access - Rep. Hurley

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 342
Committee Substitute Favorable 3/20/97

Short Title: Mecklenburg Bid Limit Increased. (Local)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO RAISE THE THRESHOLD FOR THE INFORMAL BIDDING PROCEDURE FOR LETTING PUBLIC CONTRACTS BY THE COUNTY OF MECKLENBURG.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129(a) reads as rewritten:

"(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars ($100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ~~twenty thousand dollars ($20,000),~~ one hundred thousand dollars ($100,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of

gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131."

Section 2. Section 1 of Chapter 712 of the 1993 Session Laws is repealed.

Section 3. Section 1 of this act applies to the County of Mecklenburg only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 989*
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/12/97

Short Title: School Administrator's Exam Fee. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE FEE FOR THE SCHOOL ADMINISTRATORS' EXAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-290.5(a) reads as rewritten:

"(a) The Standards Board shall administer this Article. In fulfilling this duty, the Standards Board shall:

(1) In accordance with subsection (c) of this section, develop and implement a North Carolina Public School Administrator Exam, based on the professional standards established by the Standards Board.

(2) Establish and collect an application fee not to exceed fifty dollars ($50.00). ~~($50.00), and an exam fee not to exceed one hundred fifty dollars ($150.00).~~ Fees collected under this Article shall be credited to the General Fund as nontax revenue.

(3) Review the educational achievements of an applicant to take the exam to determine whether the achievements meet the requirements set by G.S. 115C-290.7.

(4) Notify the State Board of Education of the names and addresses of the persons who passed the exam and are thereby recommended to be certified as public school administrators by the State Board of Education.

(5) Maintain accounts and records in accordance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

(6) Adopt rules in accordance with Chapter 150B of the General Statutes to implement this Article.

(7) Submit an annual report by December 1 of each year to the Joint Legislative Education Oversight Committee of its activities during the preceding year, together with any recommendations and findings regarding improvement of the profession of public school administration."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 989 (Third Edition)

SHORT TITLE: School Administrator's Exam Fee

SPONSOR(S): Rep. Rogers

FISCAL IMPACT

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

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

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Education - N C Standards Board for Public School Administration

EFFECTIVE DATE: The act becomes effective July 1, 1997.

BILL SUMMARY: The bill removes the fee for the school administrator's exam from the statutes.

BACKGROUND: The General Assembly created the North Carolina Standards Board for Public School Administration in 1993. For administrative purposes, the seven member board is under the State Board of Education. The Board is charged with developing and implementing a North Carolina Public School Administrator Exam effective January 1, 1998. To be eligible for the exam, a person must have a bachelors degree and a graduate degree from an accredited public school administration program. Passage of the exam is required to be certified by the State Board of Education as a public school administrator. Certification by the State Board of Education is a condition that must be met prior to assuming a job as an assistant principal or principal. Those currently serving as principals or assistant principals are grandfathered in and do not take the exam. However, for those persons who were previously certified as a principal, but are not in a principal position now, would have to take the exam in order to return to a school administrative post.

ASSUMPTIONS AND METHODOLOGY: The State Board of Education estimates that 500 individuals will take the public school administrators exam each year. The Board has chosen ETS (Education Testing Service) to administer the exam at a cost of $400 per exam. The school administrators will pay ETS directly for the exams. The $150 exam fee was originally placed in the statute in 1993 before the Standards Board had determined what type of exam would be given and who would administer the exam.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington
DATE: June 11, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 938

Short Title: Construction Worker Training Credit. (Public)

Sponsors: Senators Jordan; Albertson, Conder, Hoyle, Lucas, Plyler, Rand, Reeves, Soles, Warren, and Weinstein.

Referred to: Finance.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TAX CREDITS FOR CONSTRUCTION EMPLOYERS WHO PROVIDE CRAFTWORKER TRAINING TO EMPLOYEES AND WHO HIRE WELFARE RECIPIENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-129.2 reads as rewritten:

"**§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.**

The following definitions apply in this Article:

(1) Construction. -- Any of the following businesses as defined in Major Groups 15, 16, and 17 of the Standard Industrial Classification Manual issued by the United States Bureau of the Census:

a. Construction.

b. Heavy construction.

c. Building-related special trades.

(1a) Cost. -- Defined in section 179 of the Code.

(2) Data processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during

the entire year. A full-time employee is an employee who holds a full-time job.

(5) Machinery and equipment. -- Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in manufacturing or processing, warehousing and distribution, or data processing. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and distribution. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(9) Welfare recipient. -- A person who was a recipient of aid to families with dependent children within the 12-month period before being hired by the taxpayer."

Section 2. G.S. 105-129.4 reads as rewritten:

"**§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.**

(a) Type of Business. -- A taxpayer is eligible for the credit for creating a construction job for a welfare recipient under G.S. 105-129.8(a1) or the credit for construction craftworker training under G.S. 105-129.11(b) if the taxpayer is engaged in the business of construction. A taxpayer is eligible for ~~a credit~~ the remaining credits allowed by this Article if the taxpayer engages in manufacturing or processing, warehousing or distributing, or data processing, and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment or the credit for research and development if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least ten percent (10%) above the average weekly wage paid in the county in which the jobs will be located. In calculating the average weekly wage of jobs, positions that pay a wage or salary at a rate that exceeds one hundred thousand dollars ($100,000) a year shall be excluded. For the purpose of this subsection, the average wage in a county is the average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data are available.

(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim

an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.

The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.

(c) Construction Craftworker Training. -- A taxpayer is eligible for the tax credit for construction craftworker training only for training construction craftworkers in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), and only for training provided pursuant to a program that satisfies the following conditions:

(1) It combines classroom instruction and jobsite training in construction craftwork.

(2) It includes competency testing to verify completion of each stage of training.

(3) It is approved by the Department of Labor, the Department of Community Colleges, or a statewide trade association that represents employers engaged in the construction business.

To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned construction craftworker training would satisfy the requirements of this subsection. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the construction craftworker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this subsection will be satisfied. If the Department of

Community Colleges determines that the planned construction craftworker training meets the requirements of this subsection, the Department of Community Colleges shall issue a certificate describing the taxpayer, identifying the entity that approved the training program, and stating that the planned construction craftworker training meets the requirements of this subsection. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this subsection.

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability."

Section 3. G.S. 105-129.8 reads as rewritten:

"**§ 105-129.8. (Repealed effective January 1, 2002) ~~Credit~~ Credits for creating jobs.**

(a) ~~Credit.~~ Creating Jobs. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located:

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(a1) Creating Construction Jobs for Welfare Recipients. -- A taxpayer that is engaged in the construction business, has five or more employees for at least 40 weeks during the taxable year, and hires a welfare recipient as an additional full-time

employee during the year is allowed a credit of five hundred dollars ($500.00) for the job.

(a2) The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the four years in which the installment of a credit accrues, a job for which the welfare recipient credit was allowed is no longer filled by a welfare recipient, the credit expires and the taxpayer may not take any remaining installment of the welfare recipient credit with respect to that job.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by subsection (a) of this section based on the area's enterprise tier for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996."

Section 4. G.S. 105-129.11 reads as rewritten:

"§ 105-129.11. (Repealed effective January 1, 2002) ~~Credit for worker training.~~ Credits for worker training and construction craftworker training.

(a) ~~Credit.~~ Worker Training. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to fifty percent (50%) of its eligible expenditures for the training. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) ~~Eligibility. -- The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ Construction Craftworker Training. -- A taxpayer that is engaged in the construction business and provides construction craftworker training to its eligible employees is allowed a credit equal to five hundred dollars ($500.00) for each employee who completes his or her 1,000th hour of the provided training during the taxable year.

(c) Eligibility. -- The eligibility of a taxpayer's training, expenditures, and employees is determined as provided in G.S. 105-129.4."

Section 5. This act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 938
Proposed Senate Finance Committee Substitute
S938-CSLJ-5/29

Short Title: Construction Worker Training Credit. (Public)

Sponsors:

Referred to: Finance.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TAX CREDITS FOR CONSTRUCTION EMPLOYERS WHO PROVIDE CRAFTWORKER TRAINING TO EMPLOYEES AND WHO HIRE WELFARE RECIPIENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-129.2 reads as rewritten:

"**§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.**

The following definitions apply in this Article:

(1) Construction. -- Any of the following businesses as defined in Major Groups 15, 16, and 17 of the Standard Industrial Classification Manual issued by the United States Bureau of the Census:

a. Construction.

b. Heavy construction.

c. Building-related special trades.

(1a) Cost. -- Defined in section 179 of the Code.

(2) Data processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.
(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.
(5) Machinery and equipment. -- Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in manufacturing or processing, warehousing and distribution, or data processing. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
(6) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.
(7) Purchase. -- Defined in section 179 of the Code.
(8) Warehousing and distribution. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.
(9) Welfare recipient. -- A person who was a recipient of aid to families with dependent children within the 12-month period before being hired by the taxpayer."

Section 2. G.S. 105-129.4 reads as rewritten:

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for the credit for creating a construction job for a welfare recipient under G.S. 105-129.8(a1) or the credit for construction craftworker training under G.S. 105-129.11(b) if the taxpayer is engaged in the business of construction. A taxpayer is eligible for ~~a credit~~ the remaining credits allowed by this Article if the taxpayer engages in manufacturing or processing, warehousing or distributing, or data processing, and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs

for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment or the credit for research and development if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least ten percent (10%) above the average weekly wage paid in the county in which the jobs will be located. In calculating the average weekly wage of jobs, positions that pay a wage or salary at a rate that exceeds one hundred thousand dollars ($100,000) a year shall be excluded. For the purpose of this subsection, the average wage in a county is the average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data are available.

(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.

The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the

credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.

(c1) Construction Craftworker Training. -- A taxpayer is eligible for the tax credit for construction craftworker training only for training construction craftworkers in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), and only for training provided pursuant to a program that satisfies the following conditions:

(1) It combines jobsite training and related instruction in construction craftwork.

(2) It includes competency testing to verify completion of each stage of training.

(3) It is approved by the Department of Labor, the Department of Community Colleges, or a statewide trade association that represents employers engaged in the construction business.

To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 certification that the taxpayer's planned construction craftworker training would satisfy the requirements of this subsection. A taxpayer must apply to the Department of Labor for certification of registered apprenticeships and certified on-the-job training and to the Department of Community Colleges for certification of all other training. The application must be on a form provided by the certifying Department, must provide a detailed plan of the construction craftworker training to be provided, and must contain any information required by the certifying Department to determine whether the requirements of this subsection will be satisfied. If the certifying Department determines that the planned construction craftworker training meets the requirements of this subsection, it shall issue a certificate describing the taxpayer, identifying the entity that approved the training program, and stating that the planned construction craftworker training meets the requirements of this subsection. The State Board of Community Colleges and the Department of Labor may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out their responsibilities under this subsection.

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. A taxpayer that

forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability."

Section 3. G.S. 105-129.8 reads as rewritten:

"**§ 105-129.8. (Repealed effective January 1, 2002) ~~Credit~~ Credits for creating jobs.**

(a) ~~Credit.~~ Creating Jobs. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located:

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(a1) Creating Construction Jobs for Welfare Recipients. -- A taxpayer that is engaged in the construction business, has five

or more employees for at least 40 weeks during the taxable year, and hires a welfare recipient as an additional full-time employee during the year is allowed a credit of five hundred dollars ($500.00) for the job.

(a2) The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the four years in which the installment of a credit accrues, a job for which the welfare recipient credit was allowed is no longer filled by a welfare recipient, the credit expires and the taxpayer may not take any remaining installment of the welfare recipient credit with respect to that job.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by subsection (a) of this section based on the area's enterprise tier for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The

conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996."

Section 4. G.S. 105-129.11 reads as rewritten:

"§ 105-129.11. (Repealed effective January 1, 2002) ~~Credit for worker training.~~ Credits for worker training and construction craftworker training.

(a) ~~Credit.~~ Worker Training. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to fifty percent (50%) of its eligible expenditures for the training. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) ~~Eligibility. -- The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ Construction Craftworker Training. -- A taxpayer that is engaged in the construction business and provides construction craftworker training to its eligible employees is allowed a credit equal to five hundred dollars ($500.00) for each employee who completes his or her 1,000th hour of the provided training during the taxable year.

(c) Eligibility. -- The eligibility of a taxpayer's training, expenditures, and employees is determined as provided in G.S. 105-129.4."

Section 5. This act is effective for taxable years beginning on or after January 1, 1998.

EXPLANATION OF SENATE BILL 938

Proposed Committee Substitute

Construction Worker, Training Tax Credits

TO: Senate Finance Committee
FROM: Committee Staff
DATE: June 10, 1997
SPONSOR: Senator Luther Jordan

Senate Bill 938 establishes two new tax credits that can be taken against income tax or franchise tax. Both credits apply to construction employers. The first credit is for a construction employer who provides craftworker training for an employee. The second credit is for a construction employer who hires a welfare recipient. The credits are effective for taxable years beginning on or after January 1, 1998. The proposed committee substitute modifies the requirements and the application process for certification of a craftworker training program.

A construction employer is eligible to take the credit for providing craftworker training when one of the employer's employees completes his or her 1,000th hour of approved instruction. The credit is $500 for each employee. Approved instruction is instruction that combines jobsite training and related instruction in construction craftwork, includes competency testing, and has been certified by the Department of Labor (for apprenticeships and on-the-job training) or the Department of Community Colleges (for all other training). To take the credit, the taxpayer must also obtain a certification from the Secretary of Commerce that the taxpayer is eligible for the credit. The training for which a credit is provided does not have to be for a job that meets the wage standards established for the existing jobs tax credit and worker training tax credit.

A construction employer is eligible to take the credit for hiring a welfare recipient if the employer has five or more employees for at least 40 weeks during the taxable year and hires a welfare recipient as an additional full-time employee. The credit is $500 for each welfare recipient hired.

Unlike the existing jobs tax credit, the job for which the welfare recipient is hired does not have to meet the wage standards. Like the jobs tax credit, the credit may not be taken in the year in which the employee is hired but is taken in four annual installments beginning in the following year. The credit expires if, in any of these four years, the position is no longer filled by a welfare recipient or the number of full-time employees of the employer falls below the number the employer had when the welfare recipient was hired. A welfare recipient is a

person who received AFDC (aid to families with dependent children) within 12 months before being hired.

The total credits allowed by this bill, when combined with all other tax credits for new and expanding businesses, cannot exceed 50% of the taxpayer's liability for the year. Any unused portion of the credits can be carried forward for five years.

A construction employer is an employer engaged in one of three types of construction: general construction, heavy construction, or building-related special trades. General construction includes businesses primarily engaged in the construction of residential, farm, industrial, commercial, or other buildings. Heavy construction includes businesses primarily engaged in heavy construction other than building, such as highways and streets, bridges, sewers, railroads, irrigation projects, flood control projects, and marine construction. Heavy construction also includes special trade contractors primarily engaged in activities specialized to heavy construction rather than building construction. Building-related special trades includes businesses whose activities are specialized to building construction or to both building and nonbuilding projects. They include plumbing, heating and air conditioning, painting and paper hanging, electrical work, masonry, stonework, tile setting, plastering, carpentry, floor work, roofing, siding, sheet metal work, concrete work, water well drilling, excavation, demolition, antenna installation, steam cleaning, etc.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 938
SHORT TITLE: CONSTRUCTION WORKER TRAINING CREDIT
SPONSOR(S): SEN. JORDAN

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
State General Fund*			-100,000	-400,000	-800,000

EXPENDITURES: Unknown at this time

PRINCIPAL DEPARTMENTS AFFECTED: The tax credits will be administered by the Department of Revenue along with other jobs tax credits and the regular worker training tax credit. The construction worker training tax credit will require approval by either the Department of Labor, the Department of Community Colleges, or a statewide construction trade association.

EFFECTIVE DATE: Tax years beginning on or after January 1, 1998.

*See "Assumptions and Methodology"

BILL SUMMARY: (1) Amends the state income tax credit for job creation to add a $500 credit for a construction firm (with 5 or more employees for 40 or more weeks during a tax year) for each welfare recipient hired by the employer. The credit is to be taken over 4 years, beginning with the year after the job is created. For credit purposes, a welfare recipient is defined as a person who received Aid to Families With Dependent Children dollars within the 12-month period before being hired by the employer. If during on of the four years in which the installment of the credit is taken the job is no longer filled by a welfare recipient, the credit expires and the remaining installments may not be used. The credit may not exceed 50% of the employer's tax liability with a five-year carryforward. The credit sunsets on January 1, 2002. (2) Amends the existing worker training tax credit law to allow an income tax credit for a construction firm who provides construction craftworker training to its eligible employees. The credit is $500 for each employee who completes 1,000 hours of the provided training during the tax year. To be eligible for the credit, the training must combine classroom instruction and jobsite training, include competency testing for each stage of training, and be approved by the state Department of Labor, the Department of Community Colleges, or a statewide trade

association that represents construction firms. The credit may not exceed 50% of the employer's tax liability with a five-year carryforward. The credit sunsets January 1, 2002.

ASSUMPTIONS AND METHODOLOGY: There is no hard data as to the number of welfare recipients that will be hired and trained by construction firms. Thus, the approach used in this note is to simulate the tax consequences based on certain assumptions. The first assumption, based on discussions with construction industry representatives about the training capacity in the industry, uses 400 additional trainees for the1998 tax year, 1200 for the 1999 tax year, 1600 for tax year 2000, and then 1700 additional trainees for the tax year 2001. A second assumption is that the employer will receive both the hiring credit and the training credit in the year in which the training takes place. Third, it is assumed that each employer will be able to use all of the credit in the appropriate year (no carryforwards).

For information purposes, the affected construction firms had a payroll of 174,000 in 1995. In addition, the Work First program indicates that 117,500 households in the state received case assistance for 1994-95. Of this total, adult men represented 4999 (4.25%). The Work First program anticipates 50% of adult men going to work by the Year 2002. Finally, the program estimates that 2211-7775 welfare recipients will leave welfare for work during the next 5 years.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
APPROVED BY:
DATE: May 28, 1997

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 938

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

S938-ALCF-18

Page 1 of __

Date_____,1997

Comm. Sub. [YES]
Amends Title []

1 moves to amend the bill on page 2, line 24,
2 by rewriting the line to read:
3 "of public assistance under Part 2 of Article 2 of Chapter 108A of
4 the General Statutes within"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 938
Proposed Committee Substitute S938-PCS6689

Short Title: Construction Worker Training Credit. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TAX CREDITS FOR CONSTRUCTION EMPLOYERS WHO PROVIDE CRAFTWORKER TRAINING TO EMPLOYEES AND WHO HIRE WELFARE RECIPIENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-129.2 reads as rewritten:

"**§ 105-129.2. (Repealed effective January 1, 2002 -- see note) Definitions.**

The following definitions apply in this Article:

(1) Construction. -- Any of the following businesses as defined in Major Groups 15, 16, and 17 of the Standard Industrial Classification Manual issued by the United States Bureau of the Census:

a. Construction.

b. Heavy construction.

c. Building-related special trades.

(1a) Cost. -- Defined in section 179 of the Code.

(2) Data processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during

the entire year. A full-time employee is an employee who holds a full-time job.

(5) Machinery and equipment. -- Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in manufacturing or processing, warehousing and distribution, or data processing. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and distribution. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(9) Welfare recipient. -- A person who was a recipient of public assistance under Part 2 of Article 2 of Chapter 108A of the General Statutes within the 12-month period before being hired by the taxpayer."

Section 2. G.S. 105-129.4 reads as rewritten:

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for the credit for creating a construction job for a welfare recipient under G.S. 105-129.8(a1) or the credit for construction craftworker training under G.S. 105-129.11(b) if the taxpayer is engaged in the business of construction. A taxpayer is eligible for ~~a credit~~ the remaining credits allowed by this Article if the taxpayer engages in manufacturing or processing, warehousing or distributing, or data processing, and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment or the credit for research and development if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least ten percent (10%) above the average weekly wage paid in the county in which the jobs will be located. In calculating the average weekly wage of jobs, positions that pay a wage or salary at a rate that exceeds one hundred thousand dollars ($100,000) a year shall be excluded. For the purpose of this subsection, the average wage in a county is the average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data are available.

(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.

The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.

(c1) Construction Craftworker Training. -- A taxpayer is eligible for the tax credit for construction craftworker training only for training construction craftworkers in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1), and only for training provided pursuant to a program that satisfies the following conditions:

(1) It combines jobsite training and related instruction in construction craftwork.

(2) It includes competency testing to verify completion of each stage of training.

(3) It is approved by the Department of Labor, the Department of Community Colleges, or a statewide trade association that represents employers engaged in the construction business.

To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 certification that the taxpayer's planned construction craftworker training would satisfy the requirements of this subsection. A taxpayer must apply to the Department of Labor for certification of registered apprenticeships and certified on-the-job training and to the Department of Community Colleges for certification of all other training. The application must be on a form provided by the certifying Department, must provide a detailed plan of the construction craftworker

training to be provided, and must contain any information required by the certifying Department to determine whether the requirements of this subsection will be satisfied. If the certifying Department determines that the planned construction craftworker training meets the requirements of this subsection, it shall issue a certificate describing the taxpayer, identifying the entity that approved the training program, and stating that the planned construction craftworker training meets the requirements of this subsection. The State Board of Community Colleges and the Department of Labor may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out their responsibilities under this subsection.

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability."

Section 3. G.S. 105-129.8 reads as rewritten:

"**§ 105-129.8. (Repealed effective January 1, 2002) ~~Credit~~ Credits for creating jobs.**

(a) ~~Credit.~~ Creating Jobs. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located:

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(a1) Creating Construction Jobs for Welfare Recipients. -- A taxpayer that is engaged in the construction business, has five or more employees for at least 40 weeks during the taxable year, and hires a welfare recipient as an additional full-time employee during the year is allowed a credit of five hundred dollars ($500.00) for the job.

(a2) The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the four years in which the installment of a credit accrues, a job for which the welfare recipient credit was allowed is no longer filled by a welfare recipient, the credit expires and the taxpayer may not take any remaining installment of the welfare recipient credit with respect to that job.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by subsection (a) of this section based on the area's enterprise tier for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996."

Section 4. G.S. 105-129.11 reads as rewritten:

"**§ 105-129.11. (Repealed effective January 1, 2002)** ~~Credit for worker training.~~ **Credits for worker training and construction craftworker training.**

(a) ~~Credit.~~ Worker Training. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to fifty percent (50%) of its eligible expenditures for the training. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) ~~Eligibility. -- The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4.~~ Construction Craftworker Training. -- A taxpayer that is engaged in the construction business and provides construction craftworker training to its eligible employees is allowed a credit equal to five hundred dollars ($500.00) for each employee who completes his or her 1,000th hour of the provided training during the taxable year.

(c) Eligibility. -- The eligibility of a taxpayer's training, expenditures, and employees is determined as provided in G.S. 105-129.4."

Section 5. This act is effective for taxable years beginning on or after January 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 476
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 4/30/97

Short Title: Vital Records Access/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VITAL RECORDS LAWS PERTAINING TO ACCESS TO, COPIES AND PUBLIC NATURE OF, AND APPLICATION OF AUTHORIZED FEES FOR VITAL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-93 reads as rewritten:

"**§ 130A-93. Access to vital records; copies.**

(a) Only the State Registrar shall have access to original vital records and to indices to the original vital records. County offices authorized to issue certificates and the North Carolina State Archives also shall have access to indices to these original vital records, when specifically authorized by the State Registrar.

(b) Individual-specific birth records, in any form and on any medium, in the possession of the Department, local health departments, or local register of deeds offices shall not be public records pursuant to Chapter 132 of the General Statutes. Access to and copies of vital records and abstracts of vital records shall be provided in accordance with G.S. 130A-99, Chapter 161 of the General Statutes, and with this section. Birth data other than the names of children and parents, the addresses of parents, and social security numbers of parents shall be available in accordance with Chapter 132 of the General Statutes. All such records and data are State property and shall be managed only in accordance with official disposition instructions prepared by the Department of Cultural Resources. The application of this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the

North Carolina Archives and History Act. The State Registrar and other officials authorized to issue certified copies of vital records shall provide copies or abstracts of vital records, except those described in subsections (d), (e), (f) and ~~(g),~~ (g) of this section, to any person upon request.

(c) The State Registrar and other officials authorized to issue certified copies of vital records shall provide certified copies of vital records, except those described in subsections (d), (e), (f), and ~~(g),~~ (g) of this section, only to the following:

(1) A person requesting a copy of the person's own vital records or that of the person's spouse, ~~child, parent, brother or sister;~~ sibling, direct ancestor or descendant, or stepparent or stepchild;

(2) A person seeking information for a legal determination of personal or property rights; or

(3) An authorized agent, attorney or legal representative of a person described above.

(c1) A funeral director or funeral service licensee shall be entitled upon request to a certified copy of a death certificate.

(d) Copies, certified copies or abstracts of birth certificates of adopted persons shall be provided in accordance with G.S. 48-9-107.

(e) Copies or abstracts of the health and medical information contained on birth certificates shall be provided only to a person requesting a copy of the health and medical information contained on the person's own birth certificate, a person authorized by that person, or a person who will use the information for medical research purposes. Copies of or abstracts from any computer or microform database which contains individual-specific health or medical birth data, whether the database is maintained by the Department, a local health department, or any other public official, shall be provided only to an individual requesting his or her own data, a person authorized by that individual, or a person who will use the information for medical research purposes. The State Registrar shall adopt rules providing for the use of this information for medical research purposes. The rules shall, at a minimum, require a written description of the proposed use of the data, including protocols for protecting confidentiality of the data.

(f) Copies, certified copies or abstracts of new birth certificates issued to persons in the federal witness protection program shall be provided only to a person requesting a copy of the person's own birth certificate and that person's supervising federal marshall.

(g) No copies, certified copies or abstracts of vital records shall be provided to a person purporting to request copies, certified copies or abstracts of that person's own vital records upon determination that the person whose vital records are being requested is deceased.

(h) A certified copy issued under the provisions of this section shall have the same evidentiary value as the original and shall be prima facie evidence of the facts stated in the document. The State Registrar may appoint agents who shall have the authority to issue certified copies under a facsimile signature of the State Registrar.

These copies shall have the same evidentiary value as those issued by the State Registrar.

(i) Fees for issuing any copy of a vital record or for conducting a search of the files when no copy is made shall be as established in G.S. ~~130A-93.1.~~ 130A-93.1 and G.S. 161-10.

(j) No person shall prepare or issue any certificate which purports to be an official certified copy of a vital record except as authorized in this Article or the rules."

Section 2. G.S. 130A-93.1 reads as rewritten:

"**§ 130A-93.1. Fees for vital records copies or search; automation fund.**

(a) The State Registrar shall collect, process, and utilize fees for services as follows:

(1) A fee not to exceed ten dollars ($10.00) shall be charged for issuing any copy of a vital record or for conducting a routine search of the files for the record when no copy is made. When certificates are issued or searches conducted by local agencies using databases maintained by the State Registrar, the local agency shall charge this fee and shall forward five dollars ($5.00) of this fee to the State Registrar for purposes established in subsection (b) of this section.

(2) A fee not to exceed ten dollars ($10.00) shall be charged in addition to the fee charged under subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.

(2a) The fee for a copy of a computer or microform database shall not exceed the cost to the agency of making and providing the copy.

(3) Except as provided in subsection ~~(b),~~ (b) of this section, fees collected under this subsection shall be used by the Department for public health purposes.

(b) The Vital Records Automation Account is established as a nonreverting account within the Department. Five dollars ($5.00) of each fee collected pursuant to subdivision (a)(1) shall be credited to this Account. The Department shall use the revenue in the Account to fully automate and maintain the vital records system. When funds sufficient to fully automate and maintain the system have accumulated in the Account, fees shall no longer be credited to the Account but shall be used as specified in subdivision ~~(a)(3).~~ (a)(3) of this section."

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

EXPLANATION OF HOUSE BILL 476:
Vital Records Access (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 10, 1997
SPONSOR: Representative Hurley
Agency Bill

House Bill 476 makes the following changes to the vital records statutes in anticipation of the automation of the birth registration system:

- Provides that general birth data is a public record.
- Provides that specific birth data, such as the person's name, the parents' names, the addresses of the parents, the social security number of the parents, and health and medical information is not a public record.
- Expands the list of people who may obtain a certified copy of a vital record to include stepparents, stepchildren, and grandparents.
- Allows a funeral director or a funeral service licensee to obtain a certified copy of a death certificate.
- Provides that copies of or abstracts from any computer or microform database which contains individual-specific health or medical birth data may be provided only to the specific individual or a person authorized by that individual to obtain the records and to a person who will use the information for medical research purposes. This provision conforms to the current limitations on who may receive copies or abstracts of the health and medical information contained on birth certificates.
- Imposes the same fee on local agencies using the State database that the State imposes for the database's use. That fee is $10. Five dollars of this fee is credited to the Vital Records Automation Account.
- Authorizes a fee for a copy of a computer or microform database. The fee may not exceed the cost to the agency of making and providing the copy.
- Provides that the revenue in the Vital Records Automation Account may be used to maintain the automated vital records system. Currently, the money in the Account may only be used to automate the system.

Vital records include birth certificates, death certificates, marriage certificates, and the registration of divorces and annulments. The vital records are maintained by the State Registrar. Copies of vital records may be obtained from the State Registrar as well as registers of deeds and local health departments. Currently, the records registered, maintained, and issued by local officials are limited to individual counties.

In 1991, the General Assembly created a nonreverting automation account for the purpose of automating the system of vital records in this State. The electronic system will allow statewide access to vital records, enabling the local officials to issue copies of birth certificates for persons born throughout North Carolina. Full automation is expected to be completed during late 1998. The program will be pilot-tested to allow further development of the program. Statewide access to birth certification data is expected to be available within the next three years. Statewide access to death, marriage, and divorce registration will begin in stages and is expected to be completed within the next 10 years.

The Account derives its revenues from $5 of the fee charged by the State Registrar for issuing a copy of a vital record or for conducting a routine search of the files for a record when no copy is made. This bill requires local agencies using the State Registrar's database to charge the standard $10 fee for searches and to forward $5 of the fee to the State for the Vital Records Automation Account.

As the information contained on vital records becomes more available, there is growing concern about its protection. This bill specifies what information on a vital record is considered a public record. The purpose of this clarification is to prevent a person from using the Public Records Law to obtain computerized birth databases that could easily be used to generate counterfeit copies of birth certificates.

The bill becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 476 (Second Edition)

SHORT TITLE: Vital Records Access/AB

SPONSOR(S): Reps. Hurley and Baddour

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Vital Records Automation Account	(see **ASSUMPTIONS AND METHODOLOGY**)				
General Fund					
County Registers of Deeds					
EXPENDITURES					
General Fund	(see **ASSUMPTIONS AND METHODOLOGY**)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health and Natural Resources - State Center for Health Statistics ; County Registers of Deeds

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

BILL SUMMARY: The bill expands the availability of certified birth or death records to a person's direct ancestor or descendant, stepparent or stepchild, or funeral director. The bill clarifies individual-specific birth records are not public records. When a County Register of Deeds uses the state database to issue a copy of a vital record or conduct a routine search of the files for a record, then a $10 fee is charged with $5 kept by the local agency and $5 forwarded to the State Registrar for deposit into the Vital Records Automation Account. The bill also expands the use of funds credited to the Vital Records Automation Account to include maintenance of the vital records automated system.

BACKGROUND: From 1991 until March 1997, the nonreverting Vital Records Automation Account has received $1,965,835. This account has been used to equip the Vital Records Section with personal computers, to purchase and install an electronic birth registration system throughout the state, to install a system to issue computer-generated copies of birth certificates, and other automation uses. Receipts into this fund have been as follows:

FY 91-92	$267,131
FY 92-93	$352,214
FY 93-94	$366,466
FY 94-95	$363,985
FY 95-96	$377,730
FY 96-97	$238,310 (as of 3/1/97)

ASSUMPTIONS AND METHODOLOGY: The fiscal impact of this bill hinges on the implementation of an automated system for the statewide issuance of birth certificates. The system is scheduled for a pilot test in Harnett county next year. According to a Department of Environment, Health and Natural Resources (DEHNR) official, statewide access to birth certification would not be available until 3 years after the pilot testing. That would push statewide access to FY 2000-01. The automation of death, marriage, and divorce registration is not expected to be completed until FY 2006-07.

When county Register of Deeds are able to access the state database, every transaction will cost the consumer $10, the same as it does today. The current $10 is divided between the Vital Records Automation Account ($5) and DEHNR receipts ($5). DEHNR receipts are currently used to support the personnel and operating costs of the state's Vital Records Registration program. In the future, when a county does the transaction, the $10 will be divided between the county ($5) and the Vital Records Automation Account ($5). **When transactions are performed on the state database on a regular basis by counties, then county revenues will increase, DEHNR receipts will be reduced, and the Vital Records Automation Account will be held harmless. The concern for DEHNR is that to maintain their Vital Records Registration program they may need to seek an increase in their General Fund appropriation or increase receipts to make up for the deficit due to lost transactions fees.**

DEHNR believes that expanding the access to vital records to grandparents, stepparents, stepchildren, as required in HB 476, will increase revenues. Alabama is used as an example where state revenues increased when access to vital records was expanded. Access may increase transactions, but it would seem that those transactions would occur where the customer has the easiest and fastest way to get the information and that would be at the County Register of Deeds. In the short term, an increased number of transactions may affect the department's ability to absorb the impact of lost transaction receipts on the Vital Records Registration program. However, an increase in the number of transactions, whether performed by the state or by a county, will increase the revenue credited to the Vital Records Automation Account and will in the long term benefit the Vital Records Registration program. When revenues credited to the Vital Records Automation Account exceed the level required to automate and maintain the state's vital records system, any excess funds may be used to support the Vital Records

Registration program in accordance with G.S. 130A-93.1(b), which limits the amount the amount credited to the automation account.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic & Mona Moon
APPROVED BY: Tom Covington**TomC**
DATE: April 28, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 476
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 4/30/97
Proposed Committee Substitute H476-CSLC-1
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Vital Records Access/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VITAL RECORDS LAWS PERTAINING TO ACCESS TO, COPIES, AND PUBLIC NATURE OF, AND APPLICATION OF AUTHORIZED FEES, FOR VITAL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-93 reads as rewritten:

"**§ 130A-93. Access to vital records; copies.**

(a) Only the State Registrar shall have access to original vital records and to indices to the original vital records. County offices authorized to issue certificates and the North Carolina State Archives also shall have access to indices to these original vital records, when specifically authorized by the State Registrar.

(b) The following birth data, in any form and on any medium, in the possession of the Department, local health departments, or local register of deeds offices shall not be public records pursuant to Chapter 132 of the General Statutes: the names of children and parents, the addresses of parents (other than county of residence and postal code), and the social security numbers of parents. Access to copies and abstracts of these data shall be

provided in accordance with G.S. 130A-99, Chapter 161 of the General Statutes, and this section. All other birth data shall be public records pursuant to Chapter 132 of the General Statutes. All birth records and data are State property and shall be managed only in accordance with official disposition instructions prepared by the Department of Cultural Resources. The application of this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act. The State Registrar and other officials authorized to issue certified copies of vital records shall provide copies or abstracts of vital records, except those described in subsections (d), (e), (f) and ~~(g),~~ (g) of this section, to any person upon request.

(c) The State Registrar and other officials authorized to issue certified copies of vital records shall provide certified copies of vital records, except those described in subsections (d), (e), (f), and ~~(g),~~ (g) of this section, only to the following:

(1) A person requesting a copy of the person's own vital records or that of the person's spouse, ~~child, parent, brother or sister;~~ sibling, direct ancestor or descendant, or stepparent or stepchild;

(2) A person seeking information for a legal determination of personal or property rights; or

(3) An authorized agent, attorney or legal representative of a person described above.

(c1) A funeral director or funeral service licensee shall be entitled upon request to a certified copy of a death certificate.

(d) Copies, certified copies or abstracts of birth certificates of adopted persons shall be provided in accordance with G.S. 48-9-107.

(e) Copies or abstracts of the health and medical information contained on birth certificates shall be provided only to a person requesting a copy of the health and medical information contained on the person's own birth certificate, a person authorized by that person, or a person who will use the information for medical research purposes. Copies of or abstracts from any computer or microform database which contains individual-specific health or medical birth data, whether the database is maintained by the Department, a local health department, or any other public official, shall be provided only to an individual requesting his or her own data, a person authorized by that individual, or a person who will use the information for medical research purposes. The State Registrar

shall adopt rules providing for the use of this information for medical research purposes. The rules shall, at a minimum, require a written description of the proposed use of the data, including protocols for protecting confidentiality of the data.

(f) Copies, certified copies or abstracts of new birth certificates issued to persons in the federal witness protection program shall be provided only to a person requesting a copy of the person's own birth certificate and that person's supervising federal marshall.

(g) No copies, certified copies or abstracts of vital records shall be provided to a person purporting to request copies, certified copies or abstracts of that person's own vital records upon determination that the person whose vital records are being requested is deceased.

(h) A certified copy issued under the provisions of this section shall have the same evidentiary value as the original and shall be prima facie evidence of the facts stated in the document. The State Registrar may appoint agents who shall have the authority to issue certified copies under a facsimile signature of the State Registrar. These copies shall have the same evidentiary value as those issued by the State Registrar.

(i) Fees for issuing any copy of a vital record or for conducting a search of the files when no copy is made shall be as established in G.S. ~~130A-93.1.~~ 130A-93.1 and G.S. 161-10.

(j) No person shall prepare or issue any certificate which purports to be an official certified copy of a vital record except as authorized in this Article or the rules."

Section 2. G.S. 130A-93.1 reads as rewritten:

"**§ 130A-93.1. Fees for vital records copies or search; automation fund.**

(a) The State Registrar shall collect, process, and utilize fees for services as follows:

(1) A fee not to exceed ten dollars ($10.00) shall be charged for issuing any copy of a vital record or for conducting a routine search of the files for the record when no copy is made. When certificates are issued or searches conducted by local agencies using databases maintained by the State Registrar, the local agency shall charge this fee and shall forward five dollars ($5.00) of this fee to the State Registrar for purposes established in subsection (b) of this section.

(2) A fee not to exceed ten dollars ($10.00) shall be charged in addition to the fee charged under

subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.

(2a) The fee for a copy of a computer or microform database shall not exceed the cost to the agency of making and providing the copy.

(3) Except as provided in subsection ~~(b),~~ (b) of this section, fees collected under this subsection shall be used by the Department for public health purposes.

(b) The Vital Records Automation Account is established as a nonreverting account within the Department. Five dollars ($5.00) of each fee collected pursuant to subdivision (a)(1) shall be credited to this Account. The Department shall use the revenue in the Account to fully automate and maintain the vital records system. When funds sufficient to fully automate and maintain the system have accumulated in the Account, fees shall no longer be credited to the Account but shall be used as specified in subdivision ~~(a)(3).~~ (a)(3) of this section."

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

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/11/'97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Eudy	Capital Strategies
Andrea Harris	NCIMEJ
Henry Jones	Attorney Raleigh
Dave Simpson	CAROLINAS AGC
Doug Huff	Centurion Const. Co.
Henry Clegg	Carolinas AGC
Ruth Sappie	NCDOT
Hoyt C. Brown	ICAA
Paul Gwin	OSBM
Dan Powell	DOR
Donny Hunter	NCCCS
[illegible]	NC AGC-CID
Lynne McDaniel	citizen

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/11/'97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hal Miller	NCACCT
DAVID BEAM	NC INSULATION CONTRACTORS ASSOC.
[illegible]	DOI
Torrey McLean	DEHNR
Jan Ellington	DEHNR
Gayle P. Holder	Harnett Co. Register of Deeds
Natalie Hoskins	Charlotte Chamber of Commerce
Mary Carmichael	Mecklenburg County
Sandra Long	Myrtle Beach
Nancy Bradley	NCCBI
James Stem	UTU

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

6/11/'97

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lyman Cooler	GSX
Janet Reno	Washington

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

CORRECTED REPORT

Wednesday, June 11, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**342** Mecklenburg Bid Limit Increased
Sequential Referral: None
Recommended Referral: None

H.B.(CS)**989** School Administrator's Exam Fee
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **938** Construction Worker Training Credit
Draft Number: PCS6689
Sequential Referral: None
Recommended Referral: Appropriations
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS#2)**476** Vital Records Access/AB
Draft Number: PCS1401
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 17, 1997

12 NOON - ROOM 544 LOB

The Senate Finance Committee met on June 17, 1997, with Senator Kerr presiding. There were 25 committee members present.

H.B. 773 - Bald Head Island Charter

Representative Redwine was recognized to explain his H.B. 773. A proposed committee substitute was adopted on motion by Senator Weinstein. At the conclusion of Representative Redwine's explanation, Senator Weinstein moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill and committee substitute included in the minutes.

H.B. 363 - Child Support Options/Fees

Representative Gardner was recognized to explain H.B. 363. At the conclusion of her explanation, Senator Phillips moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

S.B. 475 - Women Work Fund

Senator Perdue was recognized to explain S.B. 475. At the conclusion of her explanation, Richard Bostic, Fiscal Research, gave a brief explanation of the fiscal note for this bill. Ms. Elaine Monaghon, Department of Administration and Coordinator for the Displaced Homemaker Programs, spoke in favor of this bill and answered questions from the committee members. Also speaking in support of this bill was Ms. Joyce Allen, Department of Administration.

Senator Kerr recognized the following people who also spoke briefly in support of this bill:

Marion Ackermon, Winston-Salem - Council on the Status of Women
Helen Worrell, Mt. Airy, Director of Women's Center in Surry County
Lois Steele, Wilmington, YWCA in Wilmington, NC

Senator Perdue offered an amendment to the bill and on her motion, this amendment was adopted by the committee. At the conclusion of discussion on this amendment, Senator Phillips moved for a "favorable" report to the bill, as amended, and there will be a committee substitute prepared for this bill. Copy of bill, amendment, committee substitute, explanation and fiscal note included in the minutes.

H.B. 337 - Randolph Occupancy Tax

Representative Culp was recognized to explain this bill. On motion by Senator Weinstein, a proposed committee substitute was adopted for discussion by the committee. On motion by Senator Dannelly, the committee substitute was given a "favorable" report by the committee. Copy of bill, committee substitute and fiscal note included in the minutes.

H.B. 748 - Matthews/Charlotte Boundary

Representative Gulley was recognized to explain this bill. At the conclusion of his explanation, Senator Rand moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

Senator Kerr announced that **H. B. 867 - Matthews Annexation/Zoning** would be pulled and discussed further at a later date.

H.B. 989 - School Administrator's Exam Fees

Senator Lee was recognized to explain this bill for Representative Rogers. Senator Lee offered an amendment to this bill and Cindy Avrette, Staff Attorney, explained the amendment. Ms. Anne Berlan, Legislative Director for the State Board of Education spoke in support of this bill, as it is to be amended. Also speaking in support of the bill was Ms. Linda Stevens, Director of the Standard Boards for Public School Administration. Senator Winner offered a change in the amendment. After a general discussion of this amendment, on motion by Senator Lee, the amendment was adopted. After further discussion and all questions being answered, there was a motion by Senator Dannelly that this bill, as amended, be given a "favorable" report and the motion carried. The bill, as amended, will be rolled into a Senate Committee Substitute. Copy of bill, amendment, committee substitute and explanation included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

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

Attachment # 1

AGENDA

Tuesday, June 17, 1997 - 12 Noon

Room 544

S.B. 475 - Women Work Fund - Sen. Perdue

H.B. 337 - Randolph Occupancy Tax - Rep. Culp

H.B. 363 - Child Support Options/Fees - Rep. Gardner

H.B. 748 - Matthews/Charlotte Boundary - Rep. Gulley

H.B. 773 - Bald Head Island Charter - Rep. Redwine

H.B. 867 - Matthews Annexation/Zoning - Rep. Gulley

H.B. 989 - School Administrator's Exam Fees - Rep. Rogers

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 773

Short Title: Bald Head Island Charter. (Local)

Sponsors: Representatives Redwine and Hill (Cosponsors).

Referred to: Ways and Means.

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND.

Whereas, Bald Head Island is suitably located in a subtropic environment and blessed with temperate climates from the Atlantic Ocean and is conducive to the maintenance of permanent and retirement residences and other buildings and structures with an emphasis on environmental controls and a planned community; and

Whereas, the Village of Bald Head Island, in company with all its residents and property owners and their representatives, is fully aware of the unique nature of Bald Head Island with its combination of structures, land, and vegetation, including the oldest standing lighthouse along the coast of the State and approximately 172 acres of publicly owned prime maritime forest, that exist in a delicate ecological balance requiring careful planning, nurture, and support, as evidenced in the development plan for the island; and

Whereas, Bald Head Island is solely situated between the waters of the Atlantic Ocean and the Cape Fear River and is not connected to the mainland of the State by either natural or man-made structures, necessitating a unique form of transportation unlike any other in the State; and

Whereas, the Village of Bald Head Island recognizes the inordinately large numbers of nonresident property owners and values their past contributions to the orderly and successful development of Bald Head Island; and

Whereas, while there exists no formal arrangement to continue an ongoing obligatory relationship with the nonresident property owners, the Village of

Bald Head Island has long recognized such a relationship to be beneficial to all persons who have an interest in the island and the advisability of continuing to call upon nonresidents for their expertise and counsel; and

Whereas, the Village of Bald Head Island has served and will continue to serve as a model for cooperation between government and property owners and their representatives in efficient service and good planning without duplication in expenditures or unnecessary taxation; and

Whereas, Bald Head Island with its variance in seasonal population has benefited from the advantages of a municipal form of government, with the modifications and limitations as specified herein, in order to achieve its goals as a planned community; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Village of Bald Head Island is revised and consolidated to read as follows:

"THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation.** The Village of Bald Head Island, North Carolina, in Brunswick County, and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Village of Bald Head Island', hereinafter at times referred to as the 'Village'.

"Section 1.2. **Powers.** The Village shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Village of Bald Head Island specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Village and as they may be altered from time to time in accordance with law. An official map of the Village, showing the current municipal boundaries, shall be maintained permanently in the office of the Village Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the offices of the Secretary of State, the Brunswick County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **Village Governing Body; Composition.** The Mayor and the Village Council shall be the governing body of the Village.

"Section 2.2. **Village Council; Composition; Terms of Office.** The Council shall be composed of five members to be elected by all the qualified voters of the Village for terms of four years, or until their successors are elected and qualified.

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by the Council from among its membership, to serve for a term of two years. The Mayor shall be the official head of the Village government and preside at meetings of the Council, shall have the right to vote on all matters before the Council, but shall not have the power to vote again in instances where there is an equal division on a

question, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. **Mayor Pro Tempore.** The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law.

"Section 2.5. **Meetings.** In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. **Quorum; Voting Requirements.** Official actions of the Council and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.7. **Qualifications for Office; Compensation; Vacancies.** The qualifications of the Mayor and Council members shall be in accordance with general law. The Mayor and Council members shall receive no compensation for their services but may be reimbursed for ordinary and necessary expenses. Vacancies shall be filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 3.2. **Election of Council Members.** The Council members serving on the date of ratification of this Charter shall serve until the expiration of their terms or until their successors are elected and qualified. Except for the filling of vacancies as provided for in G.S. 160A-63, two Council members shall be elected at the regular municipal election in 1997 and every four years thereafter, and three Council members shall be elected at the regular municipal election in 1999 and every four years thereafter.

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"Section 4.1. **Form of Government.** The Village shall operate under the council-manager form of government, in accordance with G.S. 160A, Article 7, Part 2.

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"Section 4.3. **Manager's Personnel Authority; Role of Elected Officials.** As chief administrator, the Village Manager shall have the power to appoint, suspend, and remove all officers, department heads, and employees in the administrative service of

the Village, with the exception of the Village Attorney, the Village Clerk, and any other official whose appointment or removal is specifically vested in the Council by this Charter or by general law. Neither the Council nor any of its members shall take part in the appointment or removal of officers and employees in the administrative service of the Village, except as provided by this Charter. Except for the purpose of inquiry, or for consultation with the Village Attorney, the Council and its members shall deal with the administrative service solely through the Village Manager, Acting Manager, or Interim Manager, and neither the Council nor any of its members shall give any specific orders to any subordinates of the Village Manager, Acting Manager, or Interim Manager, either publicly or privately.

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"Section 4.6. **Tax Collector.** The Village shall have a Tax Collector to collect all taxes owed to the Village, subject to general law, this Charter, and Village ordinances and to perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Village Manager. Notwithstanding the provisions of G.S. 105-349, the Village Manager is authorized to appoint and remove the Tax Collector and any deputy tax collectors.

"Section 4.7. **Finance Director.** The Village Manager shall appoint a Finance Officer to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or as the Council may direct, or the Village Council may, at its election, confer the duties of Finance Officer on the Village Manager as Budget Officer. The Finance Officer may be entitled 'Accountant,' 'Treasurer,' 'Finance Director,' 'Finance Officer,' or any other reasonably descriptive title.

"Section 4.8. **Other Administrative Officers and Employees.** The Council may authorize other positions to be filled by appointment by the Village Manager, and may organize the Village government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. FINANCE AND TAXATION.

"Section 5.1. **Room Occupancy and Tourism Development Tax.** The authority of the Village to levy a room occupancy and tourism tax shall continue as authorized by Chapter 664 of the 1991 Session Laws, and any subsequent acts.

"ARTICLE VI. CONTRACT POST OFFICE.

"Section 6.1. **Contract Post Office.** The authority of the Village to operate a contract post office shall continue as authorized by Chapter 16 of the 1991 Session Laws, as amended by Chapter 350 of the 1991 Session Laws, and any subsequent acts.

"ARTICLE VII. NO-WAKE SPEED ZONE.

"Section 7.1. **'No-Wake' Speed Zone.** The 'no-wake' speed zone established by Chapter 688 of the 1987 Session Laws, and any subsequent acts, shall continue as authorized.

"ARTICLE VIII. MISCELLANEOUS.

"Section 8.1. **Motorboat Operation.** The Village may regulate the speed and operation of motorboats within the Village jurisdiction to preserve the tranquillity and environment of the Village.

"Section 8.2. **Sand Dunes.** The Village may construct, reconstruct, plant, and maintain sand dunes and regulate access to and across dunes to prevent or repair damage to dunes so as to provide protection against erosion or overwash.

"Section 8.3. **Beach Regulation.** The Village may, by ordinance, establish standards of dress, conduct, and decorum on the beaches of Bald Head Island and may otherwise regulate the use of those beaches within the Village jurisdiction.

"ARTICLE IX. PHASED DEVELOPMENT PLAN.

"Section 9.1. **Phased Development Plan.** In accordance with an act to incorporate the Village of Bald Head Island, Chapter 156 of the 1985 Session Laws, the Village Council was required to adopt by ordinance plans of development consistent with the historical land-use patterns and densities in existence on Bald Head Island at the time of ratification of the act. The Village Council, after public hearing and upon recommendation of its Planning Board, adopted a zoning ordinance for the undeveloped portions of Bald Head Island consistent with those historical land-use patterns and densities. Such zoning ordinance is based upon a 'Phased Development Plan' (as that term is defined in G.S. 160A-385.1(b)(3)), which plan was prepared by Bald Head Island Limited.

"Section 9.2. **Vested Rights.** The owners of the undeveloped portions of Bald Head Island are declared hereby to have acquired vested rights in accordance with G.S. 160A-385.1 as to the 'Phased Development Plan' entitled 'Revised June 29, 1995 STAGE 2 MASTER PLAN BALD HEAD ISLAND NORTH CAROLINA BALD HEAD ISLAND PLANNING DEPARTMENT' and approved by the State Division of Coastal Management on August 7, 1995. Notwithstanding the provisions of G.S. 160A-385.1(d), these vested rights shall be valid through December 31, 1999, and no longer. Nothing in this section shall be construed to prohibit the further granting of vested rights by the Village pursuant to the provisions of G.S. 160A-385.1.

"Section 9.3. **Alteration of Vested Rights.** As specifically authorized by G.S. 160A-385.1(e)(1)a., the vested rights herein granted may only be changed, prior to December 31, 1999, as allowed by the exceptions set forth in G.S. 160A-385.1(e). In addition, subject to the approval of the Village and within the limits established by the Village zoning and other land-use ordinances, vested densities may be transferred within the area depicted on the Stage 2 Master Plan referred to in Section 9.2 of this Charter so long as the density of development within the total area is not increased.

"Section 9.4. **Land-Use Regulation.** Except as herein expressly provided, nothing in this Charter shall be construed to prohibit the Village from amending its current land-use regulatory ordinances, in whole or in part, or otherwise regulating the use of land within the planning and zoning jurisdiction of the Village.

"ARTICLE X. MOTOR VEHICLE REGULATION.

"Section 10.1. **Motor Vehicle Regulation.** The Village may by ordinance exempt from the provisions of Articles 3, 3A, 11, and 13 of Chapter 20 of the General Statutes, in whole or in part, the registration, licensing, regulation, inspection, or equipping of motor vehicles and may regulate the use, operation, possession, and ownership of motor vehicles within the jurisdiction of the Village of Bald Head Island. Additionally, notwithstanding the provisions of Chapter 20 of the General Statutes or any other statute, and in addition to those powers now or hereafter conferred by law, the Village shall have the authority to regulate motor vehicles and other means of transportation within the jurisdiction of the Village, including the following:

(1) Regulation of the use and operation of all vehicles, as defined in G.S. 20-4.01(49).

(2) Regulation of all electrically powered vehicles or vehicles powered by fossil fuel or internal combustion engines.

(3) Regulation of the size, weight, lighting, safety standards, and engine or motor size or power characteristics of all vehicles or other means of transportation within the jurisdiction of the Village.

"Section 10.2. **Street Regulation.** In order to establish and preserve the unique character and aesthetics of Bald Head Island, the Village may adopt, by ordinance, such standards for the establishment and maintenance of streets and roads within the jurisdiction of the Village as it deems appropriate. The streets and roads within the jurisdiction of the Village shall not be under the authority of the North Carolina Department of Transportation. The provisions of Articles 2 and 2A of Chapter 136 of the General Statutes shall not apply within the jurisdiction of the Village. The Village shall be exempt from the provisions of G.S. 136-66.2.

"ARTICLE XI. SEA TURTLE SANCTUARY.

"Section 11.1. **Sea Turtle Sanctuary.** The Village of Bald Head Island may create and establish a sea turtle sanctuary within the areas of the Village limits above the mean low watermark, to include the foreshore. Any ordinances adopted by the Village to regulate activities within the sea turtle sanctuary that may or will disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs, must be consistent with the ordinance powers found in G.S. 160A-174, G.S. 160A-308, and any other law. The ordinances adopted by the Village may by cross-reference incorporate the criminal statutes regarding the taking of sea turtles at G.S. 113-189 and G.S. 113-337. It shall be unlawful for any person within the sea turtle sanctuary to disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs in violation of an ordinance adopted by the Village of Bald Head Island."

Section 2. The purpose of this act is to revise the Charter of the Village of Bald Head Island and to consolidate certain acts concerning the property, affairs, and government of the Village. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Section 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Section 4. The provisions of Chapter 156 of the 1985 Session Laws, except for the provisions of Section 4-3(f), (g), and (h), having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed. The provisions of Section 4-3(f), (g), and (h) of Chapter 156 of the 1985 Session Laws are expressly not repealed and shall continue as authorized.

Section 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter those offices shall be filled as provided in Articles II and III of Section 1 of this Charter.

Section 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Section 7. All existing ordinances, resolutions, and other provisions of the Village of Bald Head Island not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Section 8. No action or proceeding pending on the effective date of this act by or against the Village or any of its departments or agencies shall be abated or otherwise affected by this act.

Section 9. Whenever a reference is made in this act to a particular provision of the General Statutes, and that provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute or to the General Statute that most clearly corresponds to the statutory provision that is superseded or recodified.

Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 773
Proposed Senate Committee Substitute H773-PCS6276

Short Title: Bald Head Island Charter/Leland Annexation. (Local)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND AND TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF LELAND.

Whereas, Bald Head Island is suitably located in a subtropic environment and blessed with temperate climates from the Atlantic Ocean and is conducive to the maintenance of permanent and retirement residences and other buildings and structures with an emphasis on environmental controls and a planned community; and

Whereas, the Village of Bald Head Island, in company with all its residents and property owners and their representatives, is fully aware of the unique nature of Bald Head Island with its combination of structures, land, and vegetation, including the oldest standing lighthouse along the coast of the State and approximately 172 acres of publicly owned prime maritime forest, that exist in a delicate ecological balance requiring careful planning, nurture, and support, as evidenced in the development plan for the island; and

Whereas, Bald Head Island is solely situated between the waters of the Atlantic Ocean and the Cape Fear River and is not connected to the mainland of the State by either natural or man-made structures, necessitating a unique form of transportation unlike any other in the State; and

Whereas, the Village of Bald Head Island recognizes the inordinately large numbers of nonresident property owners and values their past contributions to the orderly and successful development of Bald Head Island; and

Whereas, while there exists no formal arrangement to continue an ongoing obligatory relationship with the nonresident property owners, the Village of Bald Head Island has long recognized such a relationship to be beneficial to all persons who have an interest in the island and the advisability of continuing to call upon nonresidents for their expertise and counsel; and

Whereas, the Village of Bald Head Island has served and will continue to serve as a model for cooperation between government and property owners and their representatives in efficient service and good planning without duplication in expenditures or unnecessary taxation; and

Whereas, Bald Head Island with its variance in seasonal population has benefited from the advantages of a municipal form of government, with the modifications and limitations as specified herein, in order to achieve its goals as a planned community; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. BALD HEAD ISLAND CHARTER

Section 1. The Charter of the Village of Bald Head Island is revised and consolidated to read as follows:

"THE CHARTER OF THE VILLAGE OF BALD HEAD ISLAND.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation.** The Village of Bald Head Island, North Carolina, in Brunswick County, and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Village of Bald Head Island', hereinafter at times referred to as the 'Village'.

"Section 1.2. **Powers.** The Village shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Village of Bald Head Island specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Village and as they may be altered from time to time in accordance with law. An official map of the Village, showing the current municipal boundaries, shall be maintained permanently in the office of the Village Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the offices of the Secretary of State, the Brunswick County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **Village Governing Body; Composition.** The Mayor and the Village Council shall be the governing body of the Village.

"Section 2.2. **Village Council; Composition; Terms of Office.** The Council shall be composed of five members to be elected by all the qualified voters of the Village for terms of four years, or until their successors are elected and qualified.

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by the Council from among its membership, to serve for a term of two years. The Mayor

shall be the official head of the Village government and preside at meetings of the Council, shall have the right to vote on all matters before the Council, but shall not have the power to vote again in instances where there is an equal division on a question, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. **Mayor Pro Tempore.** The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law.

"Section 2.5. **Meetings.** In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. **Quorum; Voting Requirements.** Official actions of the Council and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

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"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 3.2. **Election of Council Members.** The Council members serving on the date of ratification of this Charter shall serve until the expiration of their terms or until their successors are elected and qualified. Except for the filling of vacancies as provided for in G.S. 160A-63, two Council members shall be elected at the regular municipal election in 1997 and every four years thereafter, and three Council members shall be elected at the regular municipal election in 1999 and every four years thereafter.

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"Section 7.1. **'No-Wake' Speed Zone.** The 'no-wake' speed zone established by Chapter 688 of the 1987 Session Laws, and any subsequent acts, shall continue as authorized.

"ARTICLE VIII. MISCELLANEOUS.

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"Section 8.3. **Beach Regulation.** The Village may, by ordinance, establish standards of dress, conduct, and decorum on the beaches of Bald Head Island and may otherwise regulate the use of those beaches within the Village jurisdiction.

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"Section 9.2. **Vested Rights.** The owners of the undeveloped portions of Bald Head Island are declared hereby to have acquired vested rights in accordance with G.S. 160A-385.1 as to the 'Phased Development Plan' entitled 'Revised June 29, 1995 STAGE 2 MASTER PLAN BALD HEAD ISLAND NORTH CAROLINA BALD HEAD ISLAND PLANNING DEPARTMENT' and approved by the State Division of Coastal Management on August 7, 1995. Notwithstanding the provisions of G.S. 160A-385.1(d), these vested rights shall be valid through December 31, 1999, and no longer. Nothing in this section shall be construed to prohibit the further granting of vested rights by the Village pursuant to the provisions of G.S. 160A-385.1.

"Section 9.3. **Alteration of Vested Rights.** As specifically authorized by G.S. 160A-385.1(e)(1)a., the vested rights herein granted may only be changed, prior to December 31, 1999, as allowed by the exceptions set forth in G.S. 160A-385.1(e). In addition, subject to the approval of the Village and within the limits established by the Village zoning and other land-use ordinances, vested densities may be transferred within the area depicted on the Stage 2 Master Plan referred to in Section 9.2 of this Charter so long as the density of development within the total area is not increased.

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"Section 10.1. **Motor Vehicle Regulation.** The Village may by ordinance exempt from the provisions of Articles 3, 3A, 11, and 13 of Chapter 20 of the General Statutes, in whole or in part, the registration, licensing, regulation, inspection, or equipping of motor vehicles and may regulate the use, operation, possession, and ownership of motor vehicles within the jurisdiction of the Village of Bald Head Island. Additionally, notwithstanding the provisions of Chapter 20 of the General Statutes or any other statute, and in addition to those powers now or hereafter conferred by law, the Village shall have the authority to regulate motor vehicles and other means of transportation within the jurisdiction of the Village, including the following:

(1) Regulation of the use and operation of all vehicles, as defined in G.S. 20-4.01(49).

(2) Regulation of all electrically powered vehicles or vehicles powered by fossil fuel or internal combustion engines.

(3) Regulation of the size, weight, lighting, safety standards, and engine or motor size or power characteristics of all vehicles or other means of transportation within the jurisdiction of the Village.

"Section 10.2. **Street Regulation.** In order to establish and preserve the unique character and aesthetics of Bald Head Island, the Village may adopt, by ordinance, such standards for the establishment and maintenance of streets and roads within the jurisdiction of the Village as it deems appropriate. The streets and roads within the jurisdiction of the Village shall not be under the authority of the Department of Transportation. The provisions of Articles 2 and 2A of Chapter 136 of the General Statutes shall not apply within the jurisdiction of the Village. The Village shall be exempt from the provisions of G.S. 136-66.2.

"ARTICLE XI. SEA TURTLE SANCTUARY.

"Section 11.1. **Sea Turtle Sanctuary.** The Village of Bald Head Island may create and establish a sea turtle sanctuary within the areas of the Village limits above the mean low watermark, to include the foreshore. Any ordinances adopted by the Village to regulate activities within the sea turtle sanctuary that may or will disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs, must be consistent with the ordinance powers found in G.S. 160A-174, G.S. 160A-308, and any other law. The ordinances adopted by the Village may by cross-reference incorporate the criminal statutes regarding the taking of sea turtles in G.S. 113-189 and G.S. 113-337. It shall be unlawful for any person within the sea turtle sanctuary to disturb or destroy a sea turtle, a sea turtle nest, or sea turtle eggs in violation of an ordinance adopted by the Village of Bald Head Island."

Section 2. The purpose of Part I of this act is to revise the Charter of the Village of Bald Head Island and to consolidate certain acts concerning the property,

affairs, and government of the Village. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into Part I of this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Section 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Section 4. The provisions of Chapter 156 of the 1985 Session Laws, except for the provisions of Section 4-3(f), (g), and (h), having served the purposes for which they were enacted or having been consolidated into Part I of this act, are expressly repealed. The provisions of Section 4-3(f), (g), and (h) of Chapter 156 of the 1985 Session Laws are expressly not repealed and shall continue as authorized.

Section 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter those offices shall be filled as provided in Articles II and III of Section 1 of this Charter.

Section 6. Part I of this act does not affect any rights or interests which arose under any provisions repealed by Part I of this act.

Section 7. All existing ordinances, resolutions, and other provisions of the Village of Bald Head Island not inconsistent with the provisions of Part I of this act shall continue in effect until repealed or amended.

Section 8. No action or proceeding pending on the effective date of this act by or against the Village or any of its departments or agencies shall be abated or otherwise affected by this act.

Section 9. Whenever a reference is made in Part I of this act to a particular provision of the general statutes, and that provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended general statute or to the general statute that most clearly corresponds to the statutory provision that is superseded or recodified.

PART II. LELAND CORPORATE LIMITS

Section 10. The corporate limits of the Town of Leland are extended to include the following described tract of land:

Being a tract of land located in Town Creek Township, Brunswick County, North Carolina, and being more fully described as follows:

Beginning at a Right-of-Way Monument, in the northern Right-of-Way of US 17, said monument being located on the south side of a gate leading into the property, as shown on a map titled "THE GREGORY POOLE TRACT", prepared by Stuart Gooden, R.L.S., and dated May 31, 1994; thence with said Right-of-Way South 54 degrees 56 minutes 00 seconds West, a distance of 1111.44 feet; thence leaving said Right-of-Way North 45 degrees 36 minutes 40 seconds West, a distance of 272.41 feet; thence North 45 degrees 36 minutes 08 seconds West, a distance of 2493.87 feet; thence North 45 degrees 35 minutes 59 seconds West, a distance of

1124.67 feet; thence North 48 degrees 44 minutes 35 seconds West, a distance of 1849.91 feet; thence South 78 degrees 10 minutes 46 seconds West, a distance of 793.76 feet; thence North 66 degrees 50 minutes 57 seconds West, a distance of 1282.45 feet to a point in SR 1438 (Lanvale Road); thence North 11 degrees 09 minutes 18 seconds West, a distance of 344.20 feet to a point in the centerline of Lanvale Road thence with said centerline North 07 degrees 08 minutes 13 seconds West, a distance of 690.45 feet; thence North 06 degrees 46 minutes 34 seconds West, a distance of 441.28 feet; thence North 09 degrees 45 minutes 03 seconds West, a distance of 128.86 feet; thence North 14 degrees 28 minutes 52 seconds West, a distance of 124.97 feet; thence North 19 degrees 35 minutes 26 seconds West, a distance of 150.19 feet; thence North 26 degrees 13 minutes 01 seconds West, a distance of 150.04 feet; thence North 32 degrees 26 minutes 42 seconds West, a distance of 178.45 feet; thence North 36 degrees 09 minutes 42 seconds West, a distance of 237.57 feet; thence North 36 degrees 09 minutes 33 seconds West, a distance of 187.40 feet; thence North 36 degrees 08 minutes 44 seconds West, a distance of 246.56 feet; thence North 36 degrees 09 minutes 33 seconds West, a distance of 198.67 feet; thence North 35 degrees 57 minutes 10 seconds West, a distance of 188.63 feet; thence North 35 degrees 22 minutes 08 seconds West, a distance of 52.73 feet; thence North 30 degrees 54 minutes 08 seconds West, a distance of 193.58 feet; thence North 24 degrees 37 minutes 51 seconds West, a distance of 239.60 feet; thence leaving said centerline and with Sturgeon Branch North 72 degrees 40 minutes 07 seconds East, a distance of 30.21 feet; thence North 72 degrees 59 minutes 08 seconds East, a distance of 150.37 feet; thence North 15 degrees 10 minutes 23 seconds East, a distance of 242.76 feet; thence North 84 degrees 23 minutes 02 seconds East, a distance of 141.02 feet; thence North 55 degrees 24 minutes 41 seconds East, a distance of 313.03 feet; thence North 40 degrees 17 minutes 58 seconds East, a distance of 94.28 feet; thence North 03 degrees 42 minutes 18 seconds West, a distance of 48.90 feet; thence North 89 degrees 55 minutes 04 seconds East, a distance of 138.95 feet; thence North 63 degrees 52 minutes 03 seconds East, a distance of 108.98 feet; thence North 41 degrees 05 minutes 41 seconds East, a distance of 227.03 feet; thence North 36 degrees 48 minutes 37 seconds East, a distance of 204.72 feet; thence North 48 degrees 24 minutes 27 seconds East, a distance of 120.97 feet to a point in the run of Rice Branch thence with said branch South 51 degrees 13 minutes 24 seconds East, a distance of 35.93 feet; thence South 89 degrees 20 minutes 59 seconds East, a distance of 106.00 feet; thence North 88 degrees 41 minutes 14 seconds East, a distance of 231.37 feet; thence South 63 degrees 01 minutes 01 seconds East, a distance of 72.07 feet; thence South 30 degrees 31 minutes 05 seconds East, a distance of 88.34 feet; thence North 55 degrees 02 minutes 25 seconds East, a distance of 68.06 feet; thence South 83 degrees 07 minutes 08 seconds East, a distance of 75.12 feet; thence South 53 degrees 08 minutes 14 seconds East, a distance of 49.51 feet; thence South 37 degrees 05 minutes 03 seconds East, a distance of 77.72 feet; thence North 46 degrees 14 minutes 12 seconds East, a distance of 56.82 feet; thence South 50 degrees 58 minutes 00 seconds East, a distance of 39.22 feet; thence South 06 degrees 18 minutes

38 seconds West, a distance of 73.24 feet; thence South 17 degrees 06 minutes 48 seconds East, a distance of 38.30 feet; thence South 63 degrees 48 minutes 32 seconds East, a distance of 58.91 feet; thence North 45 degrees 05 minutes 05 seconds East, a distance of 170.10 feet; thence South 25 degrees 36 minutes 41 seconds East, a distance of 133.07 feet; thence South 08 degrees 55 minutes 12 seconds West, a distance of 56.18 feet; thence North 73 degrees 37 minutes 44 seconds East, a distance of 70.25 feet; thence South 09 degrees 39 minutes 11 seconds East, a distance of 54.37 feet; thence North 77 degrees 45 minutes 53 seconds East, a distance of 54.74 feet; thence South 65 degrees 56 minutes 51 seconds East, a distance of 118.51 feet; thence North 51 degrees 52 minutes 28 seconds East, a distance of 113.22 feet; thence South 85 degrees 54 minutes 21 seconds East, a distance of 72.82 feet; thence North 35 degrees 31 minutes 42 seconds East, a distance of 74.71 feet; thence South 80 degrees 09 minutes 57 seconds East, a distance of 94.27 feet; thence North 67 degrees 59 minutes 19 seconds East, a distance of 103.53 feet; thence South 22 degrees 55 minutes 29 seconds East, a distance of 82.62 feet; thence North 45 degrees 55 minutes 16 seconds East, a distance of 67.70 feet; thence South 37 degrees 17 minutes 37 seconds East, a distance of 68.76 feet; thence North 53 degrees 44 minutes 53 seconds East, a distance of 58.17 feet; thence North 12 degrees 52 minutes 59 seconds West, a distance of 38.98 feet; thence South 89 degrees 48 minutes 15 seconds East, a distance of 58.32 feet; thence North 58 degrees 19 minutes 43 seconds East, a distance of 93.90 feet; thence South 63 degrees 38 minutes 13 seconds East, a distance of 47.06 feet; thence South 37 degrees 24 minutes 09 seconds East, a distance of 54.13 feet; thence North 43 degrees 32 minutes 32 seconds East, a distance of 90.22 feet; thence North 83 degrees 55 minutes 19 seconds East, a distance of 54.78 feet; thence South 82 degrees 53 minutes 15 seconds East, a distance of 66.22 feet; thence North 45 degrees 30 minutes 43 seconds East, a distance of 102.03 feet; thence North 73 degrees 09 minutes 53 seconds East, a distance of 138.11 feet; thence North 20 degrees 04 minutes 19 seconds West, a distance of 80.59 feet; thence North 36 degrees 34 minutes 12 seconds East, a distance of 51.79 feet; thence North 34 degrees 47 minutes 49 seconds East, a distance of 76.72 feet; thence North 08 degrees 06 minutes 25 seconds East, a distance of 122.32 feet; thence North 71 degrees 30 minutes 52 seconds East, a distance of 75.69 feet; thence North 20 degrees 40 minutes 01 seconds West, a distance of 68.51 feet; thence North 61 degrees 42 minutes 35 seconds East, a distance of 93.25 feet; thence leaving said branch South 20 degrees 33 minutes 06 seconds East, a distance of 291.98 feet; thence South 20 degrees 32 minutes 17 seconds East, a distance of 534.90 feet; thence North 41 degrees 38 minutes 26 seconds East, a distance of 242.33 feet; thence North 53 degrees 43 minutes 59 seconds East, a distance of 347.56 feet; thence North 51 degrees 33 minutes 50 seconds East, a distance of 241.30 feet; thence North 67 degrees 45 minutes 59 seconds East, a distance of 681.05 feet; thence North 70 degrees 01 minutes 48 seconds East, a distance of 563.93 feet; thence South 53 degrees 07 minutes 47 seconds East, a distance of 1460.15 feet; thence South 05 degrees 55 minutes 43 seconds East, a distance of 3955.76 feet; thence South 05 degrees 56 minutes 16 seconds East, a distance of 830.35 feet; thence South 05 degrees 55 minutes 43

seconds East, a distance of 20.52 feet; thence South 89 degrees 43 minutes 05 seconds West, a distance of 1015.93 feet; thence South 02 degrees 20 minutes 58 seconds West, a distance of 943.79 feet; thence South 01 degrees 12 minutes 44 seconds West, a distance of 822.48 feet; thence South 84 degrees 06 minutes 28 seconds East, a distance of 1876.12 feet; thence South 35 degrees 07 minutes 22 seconds East, a distance of 277.41 feet; thence South 34 degrees 55 minutes 00 seconds East, a distance of 155.49 feet; thence South 34 degrees 41 minutes 11 seconds East, a distance of 373.23 feet; to a point in the northern Right-of-Way of US HWY 17; thence with said Right-of-Way South 54 degrees 55 minutes 59 seconds West, a distance of 397.20 feet; thence South 50 degrees 44 minutes 34 seconds West, a distance of 170.35 feet; thence South 52 degrees 40 minutes 24 seconds West, a distance of 60.36 feet; to the Point of Beginning, containing 893.64 acres, and being tract "A" as shown on a map titled "THE GREGORY POOLE TRACT", prepared by Stuart Gooden, R.L.S., and dated May 31, 1994.

Section 11. The corporate limits of the area annexed by Section 10 of this act shall be considered satellite corporate limits within the meaning of Part 4 of Article 4A of Chapter 160A of the General Statutes, except they are excluded in any calculations made under G.S. 160A-58.1(b)(5). The corporate limits of the area annexed by Section 1 of this act are not external boundaries for the purposes of Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes until they are contiguous to the town.

Section 12. Real and personal property in the territory annexed pursuant to Section 10 of this act are subject to municipal taxes as provided in G.S. 160A-58.10.

PART III. EFFECTIVE DATE

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 363
Committee Substitute Favorable 3/24/97
Third Edition Engrossed 4/2/97

Short Title: Child Support Options/Fees. (Public)

Sponsors:

Referred to:

March 3, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF HUMAN RESOURCES NOT TO ELECT ANY CHILD SUPPORT DISTRIBUTION OPTION FOR WHICH FEDERAL FUNDS ARE NOT PROVIDED AND TO INCREASE THE APPLICATION FEE FOR NONPUBLIC ASSISTANCE CHILD SUPPORT ENFORCEMENT SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Effective 30 days after this act becomes law, the Department of Human Resources shall not elect any child support distribution option for families receiving cash assistance under the State Plan for the Temporary Assistance for Needy Families (TANF) Block Grant Program for which the federal government does not provide funding to the State to exercise the option.

Section 2. G.S. 110-130.1(a) reads as rewritten:

"(a) All child support collection and paternity determination services provided under this Article to recipients of public assistance shall be made available to any individual not receiving public assistance in accordance with federal law and as contractually authorized by the nonrecipient, upon proper application and payment of a nonrefundable application fee of ~~ten dollars ($10.00).~~ twenty-five dollars ($25.00). The fee shall be reduced to ten dollars ($10.00) if the individual applying for the services is indigent. An indigent individual is an individual whose gross income does not exceed one hundred percent (100%) of the federal poverty guidelines issued each year in the Federal Register by the U.S. Department of Health

and Human Services. For the purposes of this subsection, the term 'gross income' has the same meaning as defined in G.S. 105-134.1."

Section 3. Section 1 of this act is effective when it becomes law. Section 2 of this act becomes effective July 1, 1997.

EXPLANATION OF HOUSE BILL 363:
Child Support Options/Fees (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 17, 1997
SPONSOR: Representative Gardner

House Bill 363 does two things:

1. It discontinues what is commonly known as the "$50 disregard".
2. It increases the fee for child support collection assistance rendered to families who are not recipients of public assistance if the individual's gross income does not exceed 100% of the federal poverty guidelines issued each year in the Federal Register by the U.S. Department of Health and Human Services.

Currently, an individual receiving receiving cash assistance is allowed to keep the first $50 of a child support payment regardless of the amount owed to offset the cost of the cash assistance. The balance, after the $50 distribution to the individual, is used to offset the federal, state, and local cost of cash assistance. Effective October 1, 1996, the federal government repealed the federal law requiring a disregard or pass-through of the first $50 of any child support payments each month for a family receiving cash assistance. States may continue to disregard support distributed to the family, but the federal government will not share in the cost of doing so. Section 1 of this bill discontinues any distribution option, including the $50 disregard, for which the federal government does not share in the cost of funding. This section is effective when the act becomes law.

All of the child support collection and paternity determination services provided to recipients of public assistance are also available others. Currently, there is a nonrefundable fee of $10 charged for the services. The federal government allows states to collect up to $25 for the services. Section 2 of the bill increases the nonrefundable fee to $25 for individuals whose gross income does not exceed 100% of the federal poverty guidelines issued each year in the Federal Register by the U.S. Department of Health and Human Services. This section becomes effective July 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 363

SHORT TITLE: Child Support Options/Fees

SPONSOR(S): Representative Charlotte Gardner

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
(State)	$27,346	$35,003	$44,804	$57,349	$73,406
(County)	42,998	48,158	53,937	60,409	67,658
Total	**$70,344**	**$83,161**	**$98,741**	**$117,578**	**$141,064**
EXPENDITURES	(12,623,608)	(12,623,608)	(12,623,608)	(12,623,608)	(12,623,608)
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Human Resources

EFFECTIVE DATE: Section 1, 30 days after the bill is enacted. Section 2, July 1, 1997.

BILL SUMMARY: This bill involves two child support program components which impact state and county governments. First, the bill mandates the termination of any child support payments for families receiving cash assistance under the Temporary Assistance for Needy Families (TANF) Block Grant Program for which the federal government does not provide funding to the State. The second component of the bill amends G.S. 110-130.1(a) to increase the nonrefundable child support collection and paternity determination application fee from the current amount of $10 per application to $25, the maximum allowable under federal law.

BACKGROUND: Prior to the passage of federal welfare reform, federal, state and local governments participated in "disregard" and "excess" payments. A disregard payment is a payment in which an individual receiving cash assistance is allowed to keep the first $50 of a child support payment regardless of the amount owed to offset the cost of the cash assistance. The balance, after

the $50 distribution to the individual, is used to offset the federal, state and local cost of cash assistance. An "excess" payment is the amount paid in child support (paid by the non-custodial parent) that exceeds the current month's public assistance benefits paid to the custodial parent. These payments were made to the recipient regardless of the amount due to federal, state and local governments for past due cash assistance repayments (also known as arrearages).

The passage of federal welfare reform (Personal Responsibility and Work Opportunity Reconciliation Act - P.L. 104-193), eliminated federal participation in "disregard" and "excess" payments and made state and local participation optional. Termination of federal participation in these payments became effective October 1, 1996 and North Carolina counties ended their financial participation December 31, 1996. Thus since January 1, 1997, the State has been incurring the full cost of both the disregard and excess payments.

ASSUMPTIONS AND METHODOLOGY:

Section 1. The first part of the bill addresses the termination of child support payments known as "disregard" and "excess" payments. The following assumptions were used:

(1) the law becomes effective July 1, 1997;
(2) anticipated savings are based upon actual payments made through calendar year 1996 {FY 95/96 actual payments = $12.6 Million}; and
(3) federal financial participation remains at 63.29% over next five fiscal years.

Termination of the state's participation would result in an estimated savings of $810,597 for April 1997 and $810,597 for May 1997.

Section 2. The second section of the bill proposes an increase in child support collection and paternity determination application fees from the current fee of $10 per application to the maximum allowable under federal law, $25. The following assumptions were used:

(1) the rate of growth in new applications will continue at 28% over the next five years - in State operated Child Support Enforcement (CSE) Offices {FY 96/97 new applications = 3,273 x 28%};
(2) the rate of growth in new applications will continue at 12% in county operated CSE offices {FY 96/97 new applications = 6,721 x 12%} over the next five years;
(3) the federal financial participation rate (the rate at which the federal government reimburses states) will continue at 63.29% over the next five years;
(4) the maximum allowable application fee will remain at $25 per application; and
(5) current state and federal laws governing CSE do not change.

TECHNICAL CONSIDERATIONS: None
FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Karen Hammonds-Blanks
APPROVED BY: Tom Covington**TomC**
DATE: April 1, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 475*

Short Title: WomenWork Fund. (Public)

Sponsors: Senators Perdue; Conder, Jordan, Kerr, Martin of Guilford, Odom, Rand, Shaw of Cumberland, Warren, and Winner.

Referred to: Finance.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA WOMENWORK FUND FOR DISPLACED HOMEMAKERS TO BE ADMINISTERED BY THE NORTH CAROLINA COUNCIL FOR WOMEN, AND TO ESTABLISH AN ADDITIONAL CIVIL ACTION FEE TO BE COLLECTED BY THE COURT IN DIVORCE ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. Part 10B of Article 9 of Chapter 143B of the General Statutes is amended by adding the following new section to read:

"**§ 143B-394.10. North Carolina WomenWork Fund for Displaced Homemakers.**

(a) There is established in the Department of Administration the North Carolina WomenWork Fund for Displaced Homemakers. The Fund shall be administered by the Council in accordance with Article 1 of Chapter 143 of the General Statutes and shall be used to make grants to programs for displaced homemakers. The Council shall make quarterly grants to each eligible program. Grants shall be awarded according to criteria established by the Council. No more than twenty percent (20%) of these funds shall be used for administrative costs by the Council. In order to be eligible to receive grant funds under this section, a displaced homemaker program shall fulfill all of the criteria established by the Council.

(b) The Department, upon recommendations by the Council, shall adopt rules to implement the North Carolina WomenWork Fund for Displaced Homemakers."

Section 2. G.S. 7A-305 is amended by adding the following new subsection to read:

"(a2) In every final action for divorce filed in the district court, a cost of twenty dollars ($20.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer for deposit to the North Carolina WomenWork Fund for Displaced Homemakers established under G.S. 143B-394.10. Costs assessed under this subsection shall be in addition to any other costs assessed under this section."

Section 3. This act becomes effective July 1, 1997, and applies to final actions for divorce filed on and after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 475 ~ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, lines 16 ~~17~~

( ) WHICH CHANGES THE TITLE

by deleting "twenty percent (20%)" and substituting "ten percent (10%)";

and on page 1, line 19, by adding a sentence at the end of the line to read:

"The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from the Fund and the success of those programs, and the costs associated with administering the Fund.";

and on page 2, lines ~~6-7~~ 6-7, by inserting a new section between those lines to amend G.S. 7A-305(c) by deleting "the facilities fee and General Court of Justice fee" and substituting "the facilities fee, General Court of Justice fee, and the divorce fee ~~levied~~ imposed under subsection (a2) of this section.";

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 475*
Proposed Committee Substitute S475-PCS2775

Short Title: WomenWork Fund. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA WOMENWORK FUND FOR DISPLACED HOMEMAKERS TO BE ADMINISTERED BY THE NORTH CAROLINA COUNCIL FOR WOMEN, AND TO ESTABLISH AN ADDITIONAL CIVIL ACTION FEE TO BE COLLECTED BY THE COURT IN DIVORCE ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. Part 10B of Article 9 of Chapter 143B of the General Statutes is amended by adding the following new section to read:

"**§ 143B-394.10. North Carolina WomenWork Fund for Displaced Homemakers.**

(a) There is established in the Department of Administration the North Carolina WomenWork Fund for Displaced Homemakers. The Fund shall be administered by the Council in accordance with Article 1 of Chapter 143 of the General Statutes and shall be used to make grants to programs for displaced homemakers. The Council shall make quarterly grants to each eligible program. Grants shall be awarded according to criteria established by the Council. No more than ten percent (10%) of these funds shall be used for administrative costs by the Council. In order to be eligible to receive grant funds under this section, a displaced homemaker program shall fulfill all of the criteria established by the Council. The Council shall report annually to the Joint Legislative Commission on Governmental Operations on the revenues credited to the Fund, the programs receiving grants from the Fund, the success of those programs, and the costs associated with administering the Fund.

(b) The Department, upon recommendations by the Council, shall adopt rules to implement the North Carolina WomenWork Fund for Displaced Homemakers."

Section 2. G.S. 7A-305 is amended by adding the following new subsection to read:

"(a2) In every final action for divorce filed in the district court, a cost of twenty dollars ($20.00) shall be assessed against the person filing the divorce action. Costs collected by the clerk pursuant to this subsection shall be remitted to the State Treasurer for deposit to the North Carolina WomenWork Fund for Displaced Homemakers established under G.S. 143B-394.10. Costs assessed under this subsection shall be in addition to any other costs assessed under this section."

Section 3. G.S. 7A-305(c) reads as rewritten:

"(c) The clerk of superior court, at the time of the filing of the papers initiating the action or the appeal, shall collect as advance court costs, the ~~facilities fee and General Court of Justice fee,~~ facilities fee, General Court of Justice fee, and the divorce fee imposed under subsection (a2) of this section, except in suits by an indigent. The clerk shall also collect the fee for discovery procedures under Rule 27(a) and (b) at the time of the filing of the verified petition."

Section 4. This act becomes effective July 1, 1997, and applies to final actions for divorce filed on and after that date.

EXPLANATION OF SENATE BILL 475:
WomenWork Fund

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: June 16, 1997
SPONSOR: Senator Perdue

EXISTING LAW

Provides for the North Carolina Council For Women to establish or contract for the establishment of a pilot center for displaced homemakers. Currently there are 23 centers that provide job counseling programs, job training and placement programs, health education and counseling services, financial management services, and educational services for displaced homemakers. "Displaced Homemaker" is defined as an individual who:

a. Has worked in his or her own household for at least five years and during which period has provided unpaid household services; and
b. Is unable to secure gainful employment due to the lack of required training or experience; or is unemployed, or underemployed; and
c. Has been dependent on the income of another household member but is no longer adequately supported by that income, or is receiving support from a spouse but is within two years of losing such support, or has been supported by public assistance as the parent of minor children but is no longer eligible, or is within two years of losing such eligibility.

SENATE BILL 475

Section 1 of the Bill would establish the North Carolina WomenWork Fund for Displaced Homemakers within the Department of Administration. The Fund would be administered by the Council for Women and used to make quarterly grants to eligible programs for displaced homemakers. An award of these grants would be based upon criteria established by the Council. All of these criteria must be met before a displaced homemaker program would be eligible for grant funds. No more than 20% of the funds may be used by the Council for administrative costs. The Council may recommend rules to implement the Fund, and the Department of Administration would then adopt these rules. The WomenWork Fund would provide additional funding for displaced homemaker programs.

Section 2 of the Bill adds a new subsection to G.S. 7A-305 **Costs in civil actions**. In addition to the current district court costs in civil actions of $50.00 ($10.00 facilities fee and $40.00 General Court of Justice fee), a cost of $20.00

would be assessed against the person filing a final action for divorce in district court. This cost will be collected by the clerk of court and remitted to the State Treasurer for deposit to the WomenWork Fund.

Section 3 of the Bill sets the effective date at July 1, 1997, and applies to final actions for divorce filed on and after this date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 475

SHORT TITLE: WomenWork Fund

SPONSOR(S): Senator Perdue

FISCAL IMPACT ON REVENUES

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Estimated Revenues Collected by AOC for WomenWork Fund	$740,000	$740,000	$740,000	$740,000	$740,000
Administration Funds Expended by Dept. of Administration	$117,000	$117,000	$117,000	$117,000	$117,000
Net Revenues for WomenWork Fund	$623,000	$623,000	$623,000	$623,000	$623,000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Administration

EFFECTIVE DATE: July 1, 1997 and applies to final actions on and after that date.

BILL SUMMARY: TO ESTABLISH THE NORTH CAROLINA WOMENWORK FUND FOR DISPLACED HOMEMAKERS TO BE ADMINISTERED BY THE NORTH CAROLINA COUNCIL FOR WOMEN, AND TO ESTABLISH AN ADDITIONAL CIVIL ACTION FEE TO BE COLLECTED BY THE COURT IN DIVORCE ACTIONS.

ASSUMPTIONS AND METHODOLOGY:

Judicial Department

According to data from the State Center for Health Statistics, there were 36,943 divorces and annulments in 1995. The Center estimates there will be approximately 37,000 divorces in FY 1997-98. The Judicial Department anticipates the extra $20 fee would be collected up front when the divorce action is filed. Thus, if the fee were collected in all of these cases, an additional $740,000 would be generated annually for transfer to the WomenWork fund.

The Department estimates it would take about ten hours of programming to update the accounting system in order to collect the $20 fee. This programming could be handled by a programmer within the Department's Information Services Division.

Department of Administration

The Department of Administration believes it would need roughly $86,000 to administer the expanded Displaced Homemaker program. Administrative costs would include costs of promoting the program through newsletters and other mailings, costs of increased travel to monitor local programs, and wages for temporary office support staff to help administer the program. However, the Department has the authority to spend considerably more than the $86,000 it estimates it needs. The bill allows up to 20% of the fees collected to be spent on administration. Based on the fee estimates discussed above, these administrative costs could amount to as much as $148,000. Because the Department has the authority to spend money above and beyond what it estimates it needs, we believe that the Department may spend more than $86,000. Under these assumptions, administrative costs would range somewhere between the $86,000 the Department states that it needs and the $148,000 the bill allows it to spend. We base our estimates for administrative expense on the midpoint of this range, $117,000.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Charles Perusse, Evan Rodewald
APPROVED BY: Tom L. Covington**TomC**
DATE: April 21, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 337

Short Title: Randolph Occupancy Tax. (Local)

Sponsors: Representative Culp.

Referred to: Local and Regional Government II, if favorable, Finance.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE RANDOLPH COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) **Authorization and scope.** The Randolph County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished to nonprofit charitable, educational, or religious organizations for use in furthering their nonprofit purpose.

(b) **Collection.** Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a

discount equal to the discount the State allows the operator for State sales and use tax.

(c) **Administration.** The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(d) **Penalties.** A person, firm, corporation, or association who fails or refuses to file the return or pay the tax required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Randolph County Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(e) **Distribution and use of tax revenue.** Randolph County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Randolph Tourism Development Authority. The Authority may use these funds and any other revenue it receives only to develop or promote travel and tourism and for tourism-related expenditures in Randolph County. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Randolph County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures and other expenditures that, in the judgment of the Authority, will facilitate and promote tourism. Examples of tourism-related expenditures include expenditures to create, advertise, promote, and support cultural programs, events, festivals, public park and recreation areas, historic preservation and

museums, beautification projects, parking facilities, and other public amenities and services.

(f) **Effective date of levy.** A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) **Repeal.** A tax levied under this section may be repealed or reduced by a resolution adopted by the Randolph County Board of Commissioners. Repeal or reduction of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal or reduction of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Section 2. Tourism Development Authority. (a) **Appointment and membership.** When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall be composed of nine members to be appointed by the board of commissioners as follows:

(1) Seat 1 shall represent the hotel and motel industry, seat 4 shall represent the North Carolina Zoological Park, seat 7 is unrestricted, and seat 9 shall represent the county.

(2) Seats 2, 3, 5, and 6 shall be appointed upon the recommendation of the Archdale/Trinity Chamber of Commerce, the Asheboro/Randolph Chamber of Commerce, the Liberty Chamber of Commerce, and the Randleman Chamber of Commerce, respectively.

(3) Seat 8 shall represent the hotel and motel industry and shall be appointed upon the recommendation of the Asheboro/Randolph Chamber of Commerce.

In appointing and recommending members, each entity shall strive to select individuals who either have expertise in promoting and developing travel and tourism or are affiliated with organizations that collect the tax. The board of commissioners may reject the recommendation of a chamber of commerce and require the chamber to submit additional names within 30 days after the rejection. If the chamber does not submit additional names within this period, the board of commissioners may appoint someone to the seat based upon its own recommendation.

All members of the Authority serve at the pleasure of the board of commissioners and may be removed by the board at any time. The board of commissioners shall designate one member of the Authority as chair and another as cochair. Members shall serve without compensation.

Except for initial terms, the term of office shall be for three years. No member may serve more than two consecutive three-year terms. The initial terms for seats 1, 2, and 3 shall be one year. The initial terms for seats 4, 5, and 6 shall be two years. The initial terms for seats 7, 8, and 9 shall be three years.

The Authority shall meet at the call of the chair and shall adopt bylaws and rules of procedure to govern its meetings. The Finance Officer for Randolph County shall be the ex officio finance officer of the Authority.

(b) **Duties.** The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act.

(c) **Powers.** In addition to other powers conferred by law, the Authority may contract with any person, firm, corporation, or agency to assist it in carrying out its duties. All contracts the Authority enters into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations. The Authority may accept contributions from any source to be used for the purposes provided in Section 1 of this act.

(d) **Reports.** The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 337
Proposed Senate Committee Substitute H337-PCS6277

Short Title: Randolph Occupancy Tax. (Local)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE RANDOLPH COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) **Authorization and scope.** The Randolph County Board of Commissioners may by resolution levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished to nonprofit charitable, educational, or religious organizations for use in furthering their nonprofit purpose.

(b) **Administration.** A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) **Distribution and use of tax revenue.** Randolph County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Randolph Tourism Development Authority. The Authority may use these funds and any other revenue it receives only to develop or promote travel and tourism and for tourism-related expenditures in Randolph County. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Randolph County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures and other expenditures that, in the judgment of the Authority, will facilitate and promote tourism. Examples of tourism-related expenditures include expenditures to create, advertise, promote, and support cultural programs, events, festivals, public park and recreation areas, historic preservation and museums, beautification projects, parking facilities, and other public amenities and services.

Section 2. Section 3(b) of S.L. 1997-102 reads as rewritten:

"(b) This section applies only to Madison ~~County.~~ and Randolph Counties."

Section 3. Tourism Development Authority. (a) **Appointment and membership.** When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall be composed of nine members to be appointed by the board of commissioners as follows:

(1) Seat 1 shall represent the hotel and motel industry, seat 4 shall represent the North Carolina Zoological Park, seat 7 is unrestricted, and seat 9 shall represent the county.

(2) Seats 2, 3, 5, and 6 shall be appointed upon the recommendation of the Archdale/Trinity Chamber of Commerce, the Asheboro/Randolph Chamber of Commerce, the Liberty Chamber of Commerce, and the Randleman Chamber of Commerce, respectively.

(3) Seat 8 shall represent the hotel and motel industry and shall be appointed upon the recommendation of the Asheboro/Randolph Chamber of Commerce.

In appointing and recommending members, each entity shall strive to select individuals who either have expertise in promoting and developing travel and tourism or are affiliated with organizations that collect the tax. The board of commissioners may reject the recommendation of a chamber of commerce and require the chamber to submit additional names within 30 days after the rejection. If the chamber does not submit additional names within this period, the board of

commissioners may appoint someone to the seat based upon its own recommendation.

All members of the Authority serve at the pleasure of the board of commissioners and may be removed by the board at any time. The board of commissioners shall designate one member of the Authority as chair and another as cochair. Members shall serve without compensation.

Except for initial terms, the term of office shall be for three years. No member may serve more than two consecutive three-year terms. The initial terms for seats 1, 2, and 3 shall be one year. The initial terms for seats 4, 5, and 6 shall be two years. The initial terms for seats 7, 8, and 9 shall be three years.

The Authority shall meet at the call of the chair and shall adopt bylaws and rules of procedure to govern its meetings. The Finance Officer for Randolph County shall be the ex officio finance officer of the Authority.

(b) **Duties.** The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act.

(c) **Powers.** In addition to other powers conferred by law, the Authority may contract with any person, firm, corporation, or agency to assist it in carrying out its duties. All contracts the Authority enters into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations. The Authority may accept contributions from any source to be used for the purposes provided in Section 1 of this act.

(d) **Reports.** The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

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

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 337
SHORT TITLE: Randolph Occupancy Tax
SPONSOR(S): Representative Culp

FISCAL IMPACT
Yes (X) No ( ) No Estimate Available ( )

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
County @ 3%		$100,000 to $120,000 annually			
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:		Randolph County General Fund			
EFFECTIVE DATE:		When it becomes law			

BILL SUMMARY:

The Board of County Commissioners in Randolph County is authorized to levy a room occupancy tax of up to 5% of gross receipts from rental charges for hotel, motel, tourist camp, and similar accommodations (other than those furnished to nonprofit charitable, educational, or religious organizations for use in furthering their nonprofit purpose). Includes provisions relating to administration and collection of tax and penalties for failure to pay tax or file return. Requires that Randolph Tourism Development Authority use at least two-thirds of the tax proceeds to promote travel and tourism and use the remainder of tax proceeds for tourism-related expenditures. Levy may not be effective earlier than the first day of the second month after adoption by the board of commissioners. Requires board, if it adopts levy, to create Tourism Development Authority as a public authority under the Local Government Budget and Fiscal Control Act. Includes provisions regarding composition, powers, and duties of the Authority. Requires Authority to report quarterly to the board of commissioners on receipts and expenditures.

Summary: Institute of Government

ASSUMPTIONS AND METHODOLOGY:

The assistant finance officer for Randolph County reports the expected revenue from the levy of a 3% tax is $100,000 to $120,000 annually.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk
APPROVED BY:
DATE: June 6, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 748

Short Title: Matthews/Charlotte Boundary. (Local)

Sponsors: Representatives Gulley; Earle and C. Wilson.

Referred to: Local and Regional Government II, if favorable, Finance.

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF MATTHEWS AND TO ADD THE PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF CHARLOTTE.

The General Assembly of North Carolina enacts:

Section 1. The following described property is removed from the corporate limits of the Town of Matthews and is added to the corporate limits of the City of Charlotte:

The Waters property, Mecklenburg County tax parcels 227-362-97 and 227-362-98, and the Maynard property, Mecklenburg County tax parcel 227-141-08.

Section 2. This act shall have no effect upon the validity of any liens of the Town of Matthews for ad valorem taxes or special assessments outstanding before the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property was still within the corporate limits of the Town of Matthews.

Section 3. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 989*
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/12/97

Short Title: School Administrator's Exam Fee. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE FEE FOR THE SCHOOL ADMINISTRATORS' EXAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-290.5(a) reads as rewritten:

"(a) The Standards Board shall administer this Article. In fulfilling this duty, the Standards Board shall:

(1) In accordance with subsection (c) of this section, develop and implement a North Carolina Public School Administrator Exam, based on the professional standards established by the Standards Board.

(2) Establish and collect an application fee not to exceed fifty dollars ($50.00). ~~($50.00), and an exam fee not to exceed one hundred fifty dollars ($150.00).~~ Fees collected under this Article shall be credited to the General Fund as nontax revenue.

(3) Review the educational achievements of an applicant to take the exam to determine whether the achievements meet the requirements set by G.S. 115C-290.7.

(4) Notify the State Board of Education of the names and addresses of the persons who passed the exam and are thereby recommended to be certified as public school administrators by the State Board of Education.

(5) Maintain accounts and records in accordance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.
(6) Adopt rules in accordance with Chapter 150B of the General Statutes to implement this Article.
(7) Submit an annual report by December 1 of each year to the Joint Legislative Education Oversight Committee of its activities during the preceding year, together with any recommendations and findings regarding improvement of the profession of public school administration."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 989*
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/12/97

Short Title: School Administrator's Exam Fee. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE FEE FOR THE SCHOOL ADMINISTRATORS' EXAM.

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(2) Establish and collect an application fee not to exceed fifty dollars ($50.00). ~~($50.00), and an exam fee not to exceed one hundred fifty dollars ($150.00).~~ Fees collected under this Article shall be credited to the General Fund as nontax revenue.

(3) Review the educational achievements of an applicant to take the exam to determine whether the achievements meet the requirements set by G.S. 115C-290.7.

(4) Notify the State Board of Education of the names and addresses of the persons who passed the exam and are thereby recommended to be certified as public school administrators by the State Board of Education.

(5) Maintain accounts and records in accordance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

(6) Adopt rules in accordance with Chapter 150B of the General Statutes to implement this Article.

(7) Submit an annual report by December 1 of each year to the Joint Legislative Education Oversight Committee of its activities during the preceding year, together with any recommendations and findings regarding improvement of the profession of public school administration."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 989

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

H989-ARH-003

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]
Third Edition

Senator_____

moves to amend the bill on page 2, line 10, by rewriting the line to read:

"Section 2. G.S. 115C-290.7(a) reads as rewritten:

'(a) The Standards Board shall recommend for certification by the State Board an individual who submits a complete application to the Standards Board and satisfies all of the following requirements:

(1) Pays the application fee established by the Standards Board.

~~(2) Pays the exam fee established by the Standards Board.~~

(3) Has a bachelors degree from an accredited college or accredited university and (i) has a graduate degree from a public school administration program that meets the public school administrator program approval standards set by the State Board of Education, or (ii) has a masters degree from an accredited college or accredited university and has completed by December 31, 1999, a public school administration program that meets the public school administration approval standards set by the State Board of Education.

(4) Passes the ~~exam.~~ exam adopted by the State Board ~~of Education.~~"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 989

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

H989-ARH-003

Section 3. Section 2 of this act is effective January 1, 1998, and the remainder of this act is effective July 1, 1997."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 989*
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/12/97
Proposed Senate Committee Substitute H989-PCS1405

Short Title: School Administrator's Exam Fee. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE FEE FOR THE SCHOOL ADMINISTRATORS' EXAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-290.5(a) reads as rewritten:

"(a) The Standards Board shall administer this Article. In fulfilling this duty, the Standards Board shall:

(1) In accordance with subsection (c) of this section, develop and implement a North Carolina Public School Administrator Exam, based on the professional standards established by the Standards Board.

(2) Establish and collect an application fee not to exceed fifty dollars ($50.00). ~~($50.00), and an exam fee not to exceed one hundred fifty dollars ($150.00).~~ Fees collected under this Article shall be credited to the General Fund as nontax revenue.

(3) Review the educational achievements of an applicant to take the exam to determine whether the achievements meet the requirements set by G.S. 115C-290.7.

(4) Notify the State Board of Education of the names and addresses of the persons who passed the exam and are thereby recommended to

be certified as public school administrators by the State Board of Education.

(5) Maintain accounts and records in accordance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

(6) Adopt rules in accordance with Chapter 150B of the General Statutes to implement this Article.

(7) Submit an annual report by December 1 of each year to the Joint Legislative Education Oversight Committee of its activities during the preceding year, together with any recommendations and findings regarding improvement of the profession of public school administration."

Section 2. G.S. 115C-290.7(a) reads as rewritten:

"(a) The Standards Board shall recommend for certification by the State Board an individual who submits a complete application to the Standards Board and satisfies all of the following requirements:

(1) Pays the application fee established by the Standards Board.

~~(2) Pays the exam fee established by the Standards Board.~~

(3) Has a bachelors degree from an accredited college or accredited university and (i) has a graduate degree from a public school administration program that meets the public school administrator program approval standards set by the State Board of Education, or (ii) has a masters degree from an accredited college or accredited university and has completed by December 31, 1999, a public school administration program that meets the public school administration approval standards set by the State Board of Education.

(4) Passes the ~~exam.~~ exam adopted by the State Board."

Section 3. Section 2 of this act is effective January 1, 1998, and the remainder of this act is effective July 1, 1997.

EXPLANATION OF HOUSE BILL 989:
Sch. Administrators Exam Fee - 3rd Edition

TO: Senate Finance Committee
FROM: Robin S. Johnson, Staff Attorney
DATE: June 16, 1997
SPONSOR: Representative Rogers

House Bill 989 amends G.S. 115C-290.5(a) to remove the authority of the North Carolina Standards Board for Public School Administration (Board) to collect a maximum fee of $150 for the school administrators' exam.

In 1993, the General Assembly created the Board and directed it to develop and recommend to the State Board of Education an exam for school administrators. School administrators include public school superintendents, deputy superintendents, associate superintendents, assistant superintendents, principals, and assistant principals. Beginning January 1, 1998, applicants who seek certification as school administrators will be required to take and pass this exam. (Currently certified school administrators are not required to take this exam.)

The State Board, which is directed to adopt an exam for this purpose by December 31, 1997, has chosen Education Testing Service (ETS) to administer this exam. Under current law the Board may collect an exam fee that cannot exceed $150. The Board does not plan to collect the exam fee; rather, the applicants will submit the fees directly to ETS.

H989-SMRH-002

Attachment # 2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — June 17, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Melanie Wade	NC Council for Women - DOA
Helen Norrell	Tri-County Woman Resource Ctr. Mt. Airy NC (Surry County)
Elaine Monaghan	NC Council for Women - DOA
Joyce Allen	DOA - NC Council for Women
Rhonda Sitton	DHR-DSS-CSE
Shanese Ransome	DSS
Martha Clara	DOA
Paul Zigas	OSBM
B Summers	NC Equity
Regenia Walden	N.C. Cooperative Extension Service Halifax County Halifax, NC
Marian Kearson	WS/AC Council on the Status of Women
Faye Cook Steele	Yucca D Wilmington, N.C.
Jerrid A Stevens	Standards Bd for Public School Administration
Janis Ramsey	NCADA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — June 17, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ann Belser	SBE
Chris Scott	NC AFL-CIO
Julie Beavers	Womble Carlyle Sandridge & Rice, PLLC
[illegible]	WCSR
Meredith Pare	WCSR
Timothy J. Egan	WCSR
[illegible]	WCSR
Sam McGee	WCSR
Katherine I. Davis	ElectriCities of NC, Inc.
Lanne E. Winner	EGHDS
Jim Laffin	NCAFI

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — June 17, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.

Attachment # 3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, June 18, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **363** Child Support Options/Fees.
Sequential Referral: None
Recommended Referral: None

H.B. **748** Matthews/Charlotte Boundary.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **337** Randolph Occupancy Tax.
Draft Number: PCS6277
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

H.B. **773** Bald Head Island Charter.
Draft Number: PCS6276
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment: H.B. 363; 748; 337 and 773

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, June 19, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **475** Women Work Fund.

Draft Number:	PCS2775
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**989** School Administrator's Exam Fee.

Draft Number:	PCS1405
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: SB 475; HB 989

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 18, 1997

12:00 NOON - ROOM 544

The Senate Finance Committee met. There were 20 members of the Committee present. Senator David W. Hoye, Co-Chairman, called the meeting to order and introduced the Pages, they are Dan Reeves from Raleigh, N. C., sponsored by Senator Reeves, Ginny Weatherington from Greenville, N. C., sponsored by Senator Warren, Lauren Danelly from Raleigh, N. C., sponsored by Senator Miller and Mary Mac Winters from Washington, N. C., sponsored by Senator Warren.

H. B. 810 - Nash Room Tax/Rocky Mount Annex

Senator Cooper explained the bill. Senator Phillips moved for a "favorable" report, motion passed.

H. B. 460 - Abolish Aquariums Commission/AB

Representative Culpepper came to explain the bill. Senator Kerr sent forth an amendment to this bill and made a motion for adoption, motion passed. Mr. Rhett White, Division Director of the N. C. Aquariums, spoke on the need for the bill. Senator Phillips moved for a "favorable" report as amended and roll the amendment into a committee substitute bill, motion passed.

H. B. 136 - Late Video Return/Sales Tax

Representative Weatherly came to explain the committee substitute to this bill. Senator Kerr moved for adoption of the committee substitute, motion passed. Senator Winner moved to amend the bill, motion passed. Senator Cochrane moved for a "favorable" report, motion passed with notation that the amendment be rolled into the bill for a Senate committee substitute to the bill.

H. B. 400 - Bank Assessments/AB

Senator Hoyle called on Mrs. Cindy Avrette, Staff Counsel, to explain the bill. Mr. McNeil Chestnut of the Attorney General's Office spoke on the bill. Mr. Warren Plonk of Fiscal Staff explained the Fiscal Note on the Bill. Mr. Otis Meacham, Deputy Commissioner of Banks, spoke on the bill. Senator Hoyle submitted and made a motion for a technical amendment to the bill, motion passed. Senator Lee made a motion for a "favorable, as amended" with notation that the amendment be rolled into a committee substitute, motion passed.

NOTE: HB 754 on the Agenda was not taken up due to committee running out of time.

Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report -dated June 19, 1997- is Attachment # 3

Attachment #1

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY JUNE 18, 1997

12:00 NOON - ROOM 544

- HB 136 - LATE VIDEO RETURN/SALES TAX - REP. WEATHERLY
- HB 400 - BANK ASSESSMENTS/AB. - REP. TALLENT
- HB 460 - ABOLISH AQUARIUMS COMMISSION/AB - REP. CULPEPPER

HB 754 - ILLICIT LIQUOR TAX - REP. DICKSON

Rep. Tolson

- HB 810 - Nash Room Tax / Rocky Mount Annex - Sen. Ed

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 810
Committee Substitute Favorable 4/21/97

Short Title: Nash Room Tax. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Nash Occupancy Tax. Section 1 of Chapter 32 of the 1987 Session Laws, as amended by Chapter 545 of the 1993 Session Laws, reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Nash County Board of Commissioners may ~~by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~ 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Nash County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Nash County may not levy a tax

under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) Distribution and use of tax revenue. Nash County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Nash Tourism Development Authority. The Authority shall spend at least two-thirds of the funds remitted to it under this subsection only to promote travel and tourism in Nash County, and shall spend the remainder on tourism-related expenditures. The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional

activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county and expenditures incurred by the county in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the Authority, will facilitate and support tourism.

~~(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Nash County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. County administrative provisions. (a) Article 7 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-155. Uniform provisions for room occupancy taxes.**

(a) Scope. -- This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. -- A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in

monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or reduction. -- A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to Nash County.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 810
Committee Substitute Favorable 4/21/97
Senate Judiciary Committee Substitute Adopted 6/18/97

Short Title: Nash Room Tax/Rocky Mount Annex. (Local)

Sponsors:

Referred to: Finance.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO ANNEX THE GOLD ROCK I-95 INTERCHANGE AREA INTO THE CITY OF ROCKY MOUNT.

The General Assembly of North Carolina enacts:

Section 1. Nash Occupancy Tax. Section 1 of Chapter 32 of the 1987 Session Laws, as amended by Chapter 545 of the 1993 Session Laws, reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Nash County Board of Commissioners may ~~by resolution, after not less than ten (10) days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~ 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Nash County Board of Commissioners may levy an additional room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy,

collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Nash County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) Distribution and use of tax revenue. Nash County shall, on a quarterly basis, remit the net proceeds of the occupancy ~~tax~~ taxes to the Nash Tourism Development ~~Authority.~~ Authority, itemized by tax. ~~The~~ Of the net proceeds of the tax levied under subsection (a) of this section, the Authority shall spend at least two-thirds ~~of the funds remitted to it under this subsection~~ only to promote travel and tourism in Nash County, and shall spend the remainder on tourism-related expenditures. The Authority shall spend the net proceeds of the tax levied under subsection (a1) of this section only to construct, maintain, operate, or market a convention center. The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county and expenditures incurred by the county in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the Authority, will facilitate and support tourism.

~~(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Nash County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. County administrative provisions. Section 3(b) of S.L. 1997-102 reads as rewritten:

"(b) This section applies only to ~~Madison County.~~ Madison and Nash Counties."

Section 3. Gold Rock Annexation. (a) The corporate limits of the City of Rocky Mount are extended to include the Gold Rock I-95 interchange area as described below:

Beginning at N.C.G.S. Monument "AVENT" having coordinates N=842,408.476 feet and E=2,351,974.00 feet North American Datum of 1983; thence N 69° 27'05"W a horizontal ground distance of 1833.62 feet to a point on the southern right-of-way of S.R. 1522 (N.C. 4, I-95 BUS. LOOP) and the northeastern corner of Nash County ABC Board, THE POINT OF BEGINNING; thence along the property of Nash County ABC Board S 25°01'16" W 175.00 feet to a point on the northern property line of McLane Company, Inc.; thence along said property line the following six courses and distances: N 65°00'53"W 80.17 feet to a point; thence S 24° 59'07"W 278.16 feet to a point; thence N 65°00'53"W 250.00 feet to a point; thence N 65°43'09"W 666.62 feet to a point; thence S 24°14'24"W 363.08 feet to a point; thence N 71°49'49"W 400.34 feet to a point on the eastern right-of-way of Goldrock Road (N.C. HWY 48); thence N 71°49'49"W 48.53 feet to a point; thence N 56°42'05"W 132.54 feet to a point where the western right-of-way of Goldrock Road

intersects the southern right-of-way of S.R. 1527; thence along the southern right-of-way of S.R. 1527, the following three courses and distances: N 73°04'07"W 576.50 feet to a point; thence N 14°15'53"E 20.00 feet to a point; thence N 80°06'07"W 371.90 feet to a point on the eastern right-of-way of Interstate 95, thence along the eastern right-of-way of Interstate 95 the following four courses and distances: N 38°18'51"E 127.97 feet to a point; thence N 42°46'54"E 370.70 feet to a point; thence N 53°36'38"E 97.40 feet to a point; thence N 56°05'42"E 528.44 feet to a point on the southern right-of-way of S.R. 1522; thence across S.R. 1522 N 56°09'54"E 321.63 feet to a point on the northern right-of-way of S.R. 1522; thence along a curve concave to the right having a radius of 876.93 feet and a chord bearing and distance of N 32°33'20"W 164.83 feet to a point; thence along a curve concave to the right having a radius of 638.20 feet and a chord bearing and distance of N 14°20'06"W 220.95 feet to a point; thence N 09°26'54"E 198.70 feet to a point, thence N 15°28'54"E 179.36 feet to a point; thence N 26°31'54"E 233.15 feet to a point in the southwestern corner of the property now or formerly owned by Harry A. Whitaker, Jr.; thence along the southern line of Harry A. Whitaker, S 54°03'06"E 853.10 feet to a point on the western right-of-way of Goldrock Road; thence S 57°08'52"E 59.31 feet to a point on the eastern right-of-way of Goldrock Road; thence along the property now or formerly owned by M.C. Braswell Heirs, Deed Book 220 Page 86, S 54°06'53"E 472.16 feet to a point; thence S 24°59'07"W 704.34 feet to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 60.00 feet to a point; thence along the property of Hotel Ventures of Goldrock Inc., Deed Book 1331 Page 700, the following three courses and distances: N 24°59'07"E 445.00 feet to a point; thence S 65°00'53"E 337.00 feet to a point; thence S 24°59'07"W 445.00 feet to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 472.38 feet to a point; thence S 25°01'16"W 171.00 feet to the Point of Beginning containing 71.70 acres and being in South Whitakers Township, Nash County, North Carolina and as shown on map by Joyner, Keeny & Associates entitled "Areas to be annexed to City of Rocky Mount" dated April 9, 1997.

(b) The corporate limits of the area annexed by subsection (a) of this section shall be considered satellite corporate limits within the meaning of Part 4 of Article 4A of Chapter 160A of the General Statutes. The corporate limits of the area annexed by subsection (a) of this section are not external boundaries for the purposes of Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes until they are contiguous to the municipality.

(c) Real and personal property in the territory annexed pursuant to this section is subject to municipal taxes as provided in G.S. 160A-58.10.

(d) This section becomes effective only if the City Council of the City of Rocky Mount adopts an ordinance including the area described in subsection (a) of this section in the corporate limits of the City of Rocky Mount. The ordinance is effective at the date specified therein, but not later than July 1, 1998.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 810
Committee Substitute Favorable 4/21/97
Proposed Senate Committee Substitute H810-PCS8254

Short Title: Nash Room Tax/Rocky Mount Annex. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE NASH COUNTY TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO ANNEX THE GOLD ROCK I-95 INTERCHANGE AREA INTO THE CITY OF ROCKY MOUNT.

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collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. Nash County may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

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(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

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~~(f) Effective date of levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Nash County Board of Commissioners. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. County administrative provisions. Section 3(b) of S.L. 1997-102 reads as rewritten:

"(b) This section applies only to ~~Madison County.~~ Madison and Nash Counties."

Section 3. Gold Rock Annexation. (a) The corporate limits of the City of Rocky Mount are extended to include the Gold Rock I-95 interchange area as described below:

Beginning at N.C.G.S. Monument "AVENT" having coordinates N=842,408.476 feet and E=2,351,974.00 feet North American Datum of 1983; thence N 69° 27'05"W a horizontal ground distance of 1833.62 feet to a point on the southern right-of-way of S.R. 1522 (N.C. 4, I-95 BUS. LOOP) and the northeastern corner of Nash County ABC Board, THE POINT OF BEGINNING; thence along the property of Nash County ABC Board S 25°01'16" W 175.00 feet to a point on the northern property line of McLane Company, Inc.; thence along said property line the following six courses and distances: N 65°00'53"W 80.17 feet to a point; thence S 24° 59'07"W 278.16 feet to a point; thence N 65°00'53"W 250.00 feet to a point; thence N 65°43'09"W 666.62 feet to a point; thence S 24°14'24"W 363.08 feet to a point; thence N 71°49'49"W 400.34 feet to a point on the eastern right-of-way of Goldrock Road (N.C. HWY 48); thence N 71°49'49"W 48.53 feet to a point; thence N 56°42'05"W 132.54 feet to a point where the western right-of-way of Goldrock Road

intersects the southern right-of-way of S.R. 1527; thence along the southern right-of-way of S.R. 1527, the following three courses and distances: N 73°04'07"W 576.50 feet to a point; thence N 14°15'53"E 20.00 feet to a point; thence N 80°06'07"W 371.90 feet to a point on the eastern right-of-way of Interstate 95, thence along the eastern right-of-way of Interstate 95 the following four courses and distances: N 38°18'51"E 127.97 feet to a point; thence N 42°46'54"E 370.70 feet to a point; thence N 53°36'38"E 97.40 feet to a point; thence N 56°05'42"E 528.44 feet to a point on the southern right-of-way of S.R. 1522; thence across S.R. 1522 N 56°09'54"E 321.63 feet to a point on the northern right-of-way of S.R. 1522; thence along a curve concave to the right having a radius of 876.93 feet and a chord bearing and distance of N 32°33'20"W 164.83 feet to a point; thence along a curve concave to the right having a radius of 638.20 feet and a chord bearing and distance of N 14°20'06"W 220.95 feet to a point; thence N 09°26'54"E 198.70 feet to a point, thence N 15°28'54"E 179.36 feet to a point; thence N 26°31'54"E 233.15 feet to a point in the southwestern corner of the property now or formerly owned by Harry A. Whitaker, Jr.; thence along the southern line of Harry A. Whitaker, S 54°03'06"E 853.10 feet to a point on the western right-of-way of Goldrock Road; thence S 57°08'52"E 59.31 feet to a point on the eastern right-of-way of Goldrock Road; thence along the property now or formerly owned by M.C. Braswell Heirs, Deed Book 220 Page 86, S 54°06'53"E 472.16 feet to a point; thence S 24°59'07"W 704.34 feet to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 60.00 feet to a point; thence along the property of Hotel Ventures of Goldrock Inc., Deed Book 1331 Page 700, the following three courses and distances: N 24°59'07"E 445.00 feet to a point; thence S 65°00'53"E 337.00 feet to a point; thence S 24°59'07"W 445.00 feet to a point on the northern right-of-way of S.R. 1522; thence along S.R. 1522, S 65°00'53"E 472.38 feet to a point; thence S 25°01'16"W 171.00 feet to the Point of Beginning containing 71.70 acres and being in South Whitakers Township, Nash County, North Carolina and as shown on map by Joyner, Keeny & Associates entitled "Areas to be annexed to City of Rocky Mount" dated April 9, 1997.

(b) The corporate limits of the area annexed by subsection (a) of this section shall be considered satellite corporate limits within the meaning of Part 4 of Article 4A of Chapter 160A of the General Statutes. The corporate limits of the area annexed by subsection (a) of this section are not external boundaries for the purposes of Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes until they are contiguous to the municipality.

(c) Real and personal property in the territory annexed pursuant to this section is subject to municipal taxes as provided in G.S. 160A-58.10.

(d) This section becomes effective only if the City Council of the City of Rocky Mount adopts an ordinance including the area described in subsection (a) of this section in the corporate limits of the City of Rocky Mount. The ordinance is effective at the date specified therein, but not later than July 1, 1998.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 460
Committee Substitute Favorable 4/15/97
Committee Substitute #2 Favorable 4/30/97
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/19/97

Short Title: Abolish Aquariums Commission/AB. (Public)

Sponsors:

Referred to: Finance.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ABOLISH THE NORTH CAROLINA AQUARIUMS COMMISSION, TO AUTHORIZE THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO ADOPT ENTRANCE FEES FOR THE NORTH CAROLINA AQUARIUMS, AND TO MAKE TECHNICAL CORRECTIONS.

The General Assembly of North Carolina enacts:

Section 1. Part 28 of Article 7 of Chapter 143B of the General Statutes is repealed.

Section 2. G.S. 143B-289.19 is recodified by transferring it from Part 5A of Article 7 of Chapter 143B of the General Statutes to Part 5B of Article 7 of Chapter 143B of the General Statutes and reads as rewritten:

"**§ 143B-289.19. ~~Office of Marine Affairs~~ Division of North Carolina Aquariums -- creation.**

~~There~~ The Division of North Carolina Aquariums is created in the Department of ~~Administration the Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

Section 3. G.S. 143B-289.20 reads as rewritten:

"**§ 143B-289.20. ~~Office of Marine Affairs~~ Division of North Carolina Aquariums -- organization; powers and duties.**

(a) The ~~Office~~ Division of North Carolina Aquariums shall be organized as prescribed by the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources and shall exercise the following powers and duties:

(1) Repealed by Session Laws 1991, c. 320, s. 3.

(1a) ~~To establish~~ Establish and maintain the North Carolina ~~Aquariums;~~ Aquariums.

(1b) ~~To administer~~ Administer the operations of the North Carolina Aquariums, such administrative duties to include, but not be limited to the following:

a. Adopt goals and objectives for the Aquariums and review and revise these goals and objectives ~~periodically;~~ periodically.

b. Review and approve requests for use of the Aquarium facilities and advise the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources on the most appropriate use consistent with the goals and objectives of the ~~Aquariums;~~ Aquariums.

c. Continually review and evaluate the types of projects and programs being carried out in the Aquarium facilities and determine if the operation of the facilities is in compliance with the established goals and ~~objectives;~~ objectives.

d. Recommend to the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources any policies and procedures needed to assure effective staff performance and proper liaison among Aquarium facilities in carrying out the overall purposes of the Aquarium ~~programs;~~ programs.

e. Review Aquarium budget submissions to the Secretary ~~of the Department~~ of Environment, Health, and Natural ~~Resources;~~ Resources.

f. Recruit and recommend to the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources candidates for the positions of directors of the ~~North Carolina Aquariums; and~~ Aquariums.

g. Create local advisory committees in accordance with the provisions of G.S. 143B-289.22.

(2), (3) Repealed by Session Laws 1993, c. 321, s. 28(e).

(4) to (6) Repealed by Session Laws 1991, c. 320, s. 3.

(7) Assume any other powers and duties assigned to it by the Secretary.

(b) The Secretary may adopt any rules and procedures necessary to implement this section."

Section 4. G.S. 143B-289.22 reads as rewritten:

"**§ 143B-289.22. Local advisory committees; duties; membership.**

Local advisory committees created pursuant to G.S. 143B-289.20(a)(1b) shall assist each North Carolina Aquarium in its efforts to establish projects and programs and to assure adequate citizen-consumer input into those efforts. Members of these committees shall be appointed by the Secretary ~~of the Department~~ of Environment, Health, and Natural Resources for three-year terms from nominations made by the Director of the Office of Marine Affairs. Each committee shall select one of its members to serve as chairperson. Members of the committees shall serve without compensation for services or expenses."

Section 5. Part 5B of Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-289.23. North Carolina Aquariums; fees; fund.**

(a) Fees. -- The Secretary of Environment, Health, and Natural Resources may adopt a schedule of uniform entrance fees for the North Carolina Aquariums.

(b) Fund. -- The North Carolina Aquariums Fund is hereby created as a special and nonreverting fund. The North Carolina Aquariums Fund shall be used only for repair, maintenance, and educational exhibit construction at existing aquariums and to match private funds that are raised for these purposes.

(c) ~~Disposition of~~ Fees. -- All entrance fee receipts shall be credited to the North Carolina Aquariums Fund. The Secretary of Environment, Health, and Natural Resources may expend monies from the North Carolina Aquariums Fund only upon the authorization of the General Assembly."

Section 6. G.S. 143B-279.3(b)(23) is repealed.

Section 7. G.S. 120-123(59) is repealed.

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

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 460
SHORT TITLE: Abolish Aquariums Commission
SPONSOR(S): House Proposed Committee Substitute

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	See section on assumption and methodology.				
EXPENDITURES	No additional expenses				
POSITIONS:	No new positions				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources

EFFECTIVE DATE: When it becomes law

BILL SUMMARY:
This act transfers all rights and responsibilities of the Aquariums Commission to the Secretary of Environment, Health, and Natural Resources.

The proposed act abolishes the Aquariums Commission established under G. S. 143B-344.16 and transfers the authority to dispense of fees credited to the North Carolina Special Aquariums Fund, established under G.S. 143B-344.17(f), to the Secretary of Environment, Health, and Natural Resources upon authorization of the General Assembly. The right to establish a schedule of fees, for the N. C. Aquariums, granted to the Commission under Chapter 143B is also transferred to the Secretary under this act. There are no changes to the current admission fees or to the restrictions on the uses of the revenue from admission charges.

ASSUMPTIONS AND METHODOLOGY:
No additional fiscal impacts are expected as a result, of the passage, of this act.

FISCAL RESEARCH DIVISION
PREPARED BY: Warren Plonk & Jennifer Herrera
APPROVED BY:

EXPLANATION OF HOUSE BILL 460:
Abolish Aquariums Commission (4th Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 18, 1997
SPONSOR: Representative Culpepper
Agency Bill

House Bill 460 abolishes the North Carolina Aquariums Commission, which was established in 1992. The sole purpose of the Commission was to recommend a schedule of uniform fees for the three State supported aquariums at Fort Fisher, Pine Knoll Shores, and Roanoke Island. The Commission recommended a fee schedule in 1993. The current admission fees were implemented in May of 1994 and are as follows:

Adult	$3
Sr. Citizens and Active Military	$2
Ages 6-17	$1
Under 6	Free
Members	Free
North Carolina School Groups	Free
AZA Reciporcals	Free
Handicapped Groups	Free

Discounts of 15% are provided for groups of 10 or more and for block ticket sales.

The bill moves the fee setting authority to the Secretary of Environment, Health, and Natural Resources. The fees would continue to be credited to a special, nonreverting fund known as "The North Carolina Special Aquariums Fund". The purpose of the Fund remains unchanged. The money in it may be used only for repair, maintenance, and education exhibit construction at existing aquariums and for matching private funds that are raised for one of those three purposes. The money may be expended only upon the authorization of the General Assembly.

The Department does not anticipate increasing the fees until major expansion of the facilities and exhibits are completed. Expansion plans are being completed and the construction will begin after the General Assembly appropriates expansion funds. Any fee increases would be preceded by a study of fees charged at comparable facilities. The Department would also seek input

from the three local communities, the Aquarium Advisory Committees, and the North Carolina Aquarium Society Board of Directors.

The bill repeals cross references in the statutes to the North Carolina Aquariums Commission and makes technical changes to the statutes. The bill also deletes language in the statutes to the Office of Marine Affairs because it no longer exists. The duties of that Office that concern the Aquariums now reside in the Division of North Carolina Aquariums.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 460 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 3, line 15

( ) WHICH CHANGES THE TITLE

by deleting the word "only";

and on page 3, line 16, by deleting "and educational exhibit construction" and substituting "educational exhibit construction, and operational expenses."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 136
Committee Substitute Favorable 2/26/97
Committee Substitute #2 Favorable 3/11/97
Fourth Edition Engrossed 3/17/97

Short Title: Late Video Return/Sales Tax. (Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN LATE CHARGES FOR THE LATE RETURN OF RENTED PROPERTY ARE SUBJECT TO SALES TAX AND TO PROVIDE FOR TREBLE DAMAGES IN A CIVIL ACTION TO ENFORCE PAYMENT OF CERTAIN LATE CHARGES FOR THE LATE RETURN OF A RENTED VIDEOCASSETTE TAPE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.3(16) is amended by adding a new sub-subdivision to read:

"(16) g. The term 'sales price' includes a late charge for the late return of leased or rented personal property, except that the term does not include the excess of the late charge for the late period over the rental charge for an equivalent period if the following conditions are met:

1. The late charge is imposed only if the lessee violates the terms of the lease or rental agreement by failing to return the property on time.
2. The late charge is charged and accounted for separately from the charge for leasing or renting the property."

Section 2. Article 13 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"**§ 66-67.4. Remedies for failure to pay extra-day charges for late return of video.**

(a) The following definitions apply in this section:

(1) Extra-day charge. -- A charge for the late return of a rented videocassette at a rate that does not exceed the daily rental charge rate or the regular per-day rental charge rate.

(2) Member of record. -- A person in whose name a video rental store membership is held and on whose membership a videocassette is rented.

(3) Videocassette. -- The term includes video cartridges.

(4) Video rental store. -- An entity that rents videocassette tapes for noncommercial use.

(b) A member of record who fails to pay the extra-day charges assessed for the late return of a videocassette within 30 days after written demand for payment of such charges is liable to the video rental store for a minimum amount of fifty dollars ($50.00) or three times the amount of the extra-day charges, whichever is greater, subject to a maximum amount of one hundred dollars ($100.00) per tape.

(c) The written demand shall be mailed by certified mail to the member of record's last known address.

(d) The damages provided for in this section do not apply unless, at the time of the rental of the videocassette tape, the video rental store conspicuously displayed in the vicinity of the checkout counter a sign that displays the following warnings in block letters not less than one inch in height:

'STATE LAW PROVIDES THAT FAILURE TO PAY THE LATE RETURN, EXTRA-DAY CHARGES DUE ON ANY RENTED VIDEOCASSETTE TAPE MAY RESULT IN DAMAGES OF TRIPLE THE AMOUNT OF THE LATE CHARGES, WITH A MINIMUM OF $50.00 AND A MAXIMUM OF $100.00 PER TAPE. (G.S. 66-67.4).'

(e) Any recovery of these damages must be recovered by a civil action.

(f) Nothing contained in this section shall prohibit recovery upon any other theory of law."

Section 3. This act becomes effective October 1, 1997, and applies to rentals occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 136 (Second Edition)
SHORT TITLE: Late Video Return/Sales Tax
SPONSOR(S): Representative John Weatherly

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

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

REVENUES See Assumptions and Methodology

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The sales tax is collected by the Department of Revenue. The enactment of the legislation will not have a significant impact on the tax collection efforts of the Department.

EFFECTIVE DATE: Applies to rentals occurring on or after October 1, 1997.

BILL SUMMARY: (1) Amends definition of "sales price" under sales tax law to make it clear that the tax applies to "late charges" for the late return of leased or rented personal property to the extent that the extra charge does not exceed the rental charge for an equivalent period. (2) Provides that damages equal to the greater of three times the extra day charges, or $50.00 shall be levied in a civil action to enforce payment of extra day charges assessed for the late return of a video cassette or video cartridge within 30 days after written demand for its return. The damages do not apply unless at the time of the rental the video rental establishment conspicuously displays a warning about the treble damages.

ASSUMPTIONS AND METHODOLOGY: The enactment of the bill will cause an indirect revenue gain in state and local sales tax revenue resulting from the impact of the treble damages penalty. A spokesman for the video rental industry felt that the gain would be less than $500,000 per year, but admitted that it is impossible to come up with a reliable estimate. The language clarifying the sale tax base definition will have a minor impact due to the fact that most late charges are in the form of extra day rentals. This analysis is based also on discussions with the Department of Revenue.

FISCAL RESEARCH DIVISION: 733-4910
PREPARED BY: Dave Crotts
APPROVED BY: Tom Covington
DATE: February 19, 1997

EXPLANATION OF HOUSE BILL 136
Proposed Senate Finance Committee Substitute
Late Video Return/Sales Tax

TO: Senate Finance Committee
FROM: Committee Staff
DATE: May 21, 1997
SPONSOR: Representative Weatherly

House Bill 136 makes two separate changes to the law concerning rented property:

- It clarifies that certain charges for the late return of rented personal property are subject to the sales tax.
- It provides that a person can be assessed treble damages for failure to pay certain late charges for the late return of a rented videocassette tape.

Both changes become effective October 1, 1997, and apply to rentals occurring on or after that date.

The first part of the bill specifies that a late charge imposed for the late return of leased or rented personal property is subject to sales tax. However, if the amount of the late charge exceeds the amount of the rental charge for the same period, the excess of the late charge over the rental charge is not included in the sales price if it (1) is imposed only if the lessee violates the terms of the agreement by failing to return the property on time; and (2) is charged and accounted for separately. At the present time, the application of sales tax to late charges varies depending upon the vendor's interpretation of the law. This bill will clarify the law and thus bring consistency to the application of sales tax to late charges for the late return of rental property.

The second part of the bill creates a new statutory remedy available to video rental stores when a person fails to remit the late charges owed for the late return of a videocassette tape. This remedy applies only to late charges that do not exceed the daily rental charge If a person fails to pay the late charges owed within 30 days after receiving a written demand for their payment, then the person would be liable for a minimum of $50.00 or three times the amount of late charges, whichever is greater, up to a maximum of $100 per tape. Sales tax is not applicable to these damages. Under the statute, a written demand for the payment of the late charges must be mailed by certified mail, return receipt requested, to the person's last known address. Also, the damages do not apply unless the store displays an 8x11 inch warning with boldface type at least 48 points in size stating the amount of damages available. The damages can be collected only by civil action and, if the person tenders the full amount of the extra day charges before the retailer files the action, then the damages do not apply.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 136

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

H136-ALCF-19

Date_____,1997

Comm. Sub. [YES]
Amends Title []

Senator Winner

moves to amend the bill on page 2, line 17,
by deleting the phrase "fifty dollars ($50.00)" and substituting
"thirty dollars ($30.00)";

and on page 2, line 33,
by deleting the phrase "$50.00" and substituting the phrase
"$30.00".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 400

Short Title: Bank Assessments/AB. (Public)

Sponsors: Representatives Tallent and Ramsey.

Referred to: Commerce, if favorable, Finance.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE AUTHORITY OF THE STATE BANKING COMMISSION TO ASSESS BANKS AND CONSUMER FINANCE LICENSEES FOR THE MAINTENANCE AND OPERATION OF THE OFFICE OF THE COMMISSIONER OF BANKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-122 reads as rewritten:

"**§ 53-122. Fees ~~for examinations and other services.~~ and assessments.**

(a) For the purpose of ~~paying the salaries and necessary traveling expenses~~ operating and maintaining the office of the Commissioner of Banks, ~~State bank examiners, assistant State bank examiners, clerks, stenographers and other employees of the Commissioner of Banks,~~ banks and consumer finance licensees doing business under the authority of Chapter 53 of the General Statutes shall pay the following fees and assessments ~~shall be paid~~ into the office of the Commissioner of ~~Banks:~~ Banks within 10 days after the assessment:

~~(1)~~ ~~Each bank and each branch and each limited service facility of any bank which under the laws of the State of North Carolina is subject to supervision and examination by the Commissioner of Banks and is authorized to do business or is in process of voluntary liquidation, shall, within 10 days after the assessment has been made, pay into the office of the Commissioner of Banks according to its total resources as shown by its report of condition made to the Commissioner of Banks at the close of business December 31, 1978, and on the thirty-first day of December, or the date most

~~nearly approximating same of each year thereafter on which a report of condition is made to the Commissioner of Banks not in excess of the following fees for its annual examination: eighty-five dollars ($85.00) for the first one hundred thousand dollars ($100,000) of assets or less, twelve dollars ($12.00) for each one hundred thousand dollars ($100,000) or fraction in excess thereof, and three dollars and fifty cents ($3.50) for each one hundred thousand dollars ($100,000) or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such; provided, however, with respect to loan agencies or brokers subject to the provisions of Article 15 of Chapter 53 of the General Statutes, the fee shall be one hundred seventy dollars ($170.00) for the first one hundred thousand dollars ($100,000) of assets or less, and twelve dollars ($12.00) for each one hundred thousand dollars ($100,000) or fraction in excess thereof.~~

~~(2) All examinations made other than those provided for in subdivision (1) hereof shall be deemed special examinations and for such special examination the bank shall pay into the office of the Commissioner of Banks the following fees for each special examination: eighty-five dollars ($85.00) for the first one hundred thousand dollars ($100,000) of assets or less, twelve dollars ($12.00) for each one hundred thousand dollars ($100,000) or fraction in excess thereof, and three dollars and fifty cents ($3.50) for each one hundred thousand dollars ($100,000) or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such; provided, however, with respect to loan agencies or brokers subject to the provisions of Article 15 of Chapter 53 of the General Statutes, the fee shall be one hundred seventy dollars ($170.00) for the first one hundred thousand dollars ($100,000) of assets or less, and twelve dollars ($12.00) for each one hundred thousand dollars ($100,000) or fraction in excess thereof. The fees paid for special examination shall be based on the assets of the bank examined as of the date of such examination.~~

(1) Banks. -- Each bank shall pay a cumulative assessment based on its total assets, as shown on its report of condition made to the Commissioner of Banks as of December 31 each year or the date most nearly approximating the same, not to exceed the amount determined by applying the following schedule: (i) on the first fifty million dollars ($50,000,000) of assets, or fraction thereof, six thousand dollars ($6,000); (ii) on assets over fifty million dollars ($50,000,000), but not more than two hundred fifty million dollars ($250,000,000), twelve dollars ($12.00) per one hundred thousand dollars ($100,000), or fraction thereof; (iii) on assets over two hundred fifty million dollars ($250,000,000), but not more than five

hundred million dollars ($500,000,000), nine dollars ($9.00) per one hundred thousand dollars ($100,000), or fraction thereof; (iv) on assets over five hundred million dollars ($500,000,000), but not more than one billion dollars ($1,000,000,000), seven dollars ($7.00) per one hundred thousand dollars ($100,000), or fraction thereof; (v) on assets over one billion dollars ($1,000,000,000), but not more than ten billion dollars ($10,000,000,000), five dollars ($5.00) per one hundred thousand dollars ($100,000), or fraction thereof; and (vi) on assets over ten billion dollars ($10,000,000,000), three dollars ($3.00) per one hundred thousand dollars ($100,000), or fraction thereof. Additionally, each bank shall pay an assessment on trust assets held by it in the amount of one dollar ($1.00) per one hundred thousand dollars ($100,000) of the assets, or fraction thereof; except that banks are not required to pay assessments on real estate held as trust assets.

(2) Consumer Finance Licensees. -- Each consumer finance licensee shall pay an assessment not to exceed eighteen dollars ($18.00) per one hundred thousand dollars ($100,000) of assets, or fraction thereof, plus a fee of three hundred dollars ($300.00) per office; provided, however, a consumer finance licensee shall pay a minimum annual assessment of not less than five hundred dollars ($500.00). The assessment shall be determined on a consumer finance licensee's total assets as shown on its report of condition made to the Commissioner of Banks as of December 31 each year, or the date most nearly approximating the same.

(3) Special Assessment. -- If the Commissioner of Banks determines that the financial condition or manner of operation of a bank or consumer finance licensee warrants further examination or an increased level of supervision, or in the event of a merger or conversion of a savings institution organized under State or federal law into a bank, or conversion of a federally chartered bank into a State bank, the institutions may be subject to assessment not to exceed the amount determined in accordance with the schedule set forth in subdivision (1) of subsection (a) of this section for banks or subdivision (2) for consumer finance licensees.

~~(3)~~ (b) The ~~Commissioner of Banks~~ State Banking Commission may by rule set the amount to be collected for processing any application or ~~petition~~ proceeding required by law to be filed with the Commissioner and for obtaining copies of any ~~publication or~~ public record of the Banking Commission.

~~(4)~~ (c) In all civil and criminal cases tried in any of the courts of this State wherein any of the employees of the Commissioner of Banks are used as witnesses, a fee ~~of ten dollars ($10.00)~~ per ~~day~~ day, to be determined by the presiding judge, and actual expenses incurred shall be allowed such witnesses and the same shall be paid to the Commissioner of Banks by the clerk of the court of the county in which the

case is tried and thereafter charged in bill of costs as are other costs incurred in the ~~trial; and in all civil actions tried in any of the courts of this State, wherein any of the employees of the Commissioner of Banks are required as witnesses, the party requiring such employee as witness shall deposit with the Commissioner of Banks when the subpoena is served a sufficient sum to cover the witness fee of ten dollars ($10.00) per day and expenses, and such sums as may thus be advanced shall thereafter be charged in the bill of costs as other costs are charged. All sums paid under this subdivision shall be paid to the Commissioner of Banks as are fees for examination and used in like manner.~~ matter.

~~(5)~~ (d) The total ~~compensation and necessary traveling~~ expenses of the ~~employees~~ office of the Commissioner of Banks shall not in any one year exceed the total fees collected under the provisions of this section, provided ~~such~~ the expenses ~~and compensation~~ may exceed the total fees collected in any year when surplus funds are available.

~~(6)~~ (e) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. If the estimated fees and assessments provided for under ~~subdivisions (1) and (2)~~ this section shall exceed the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may reduce by uniform percentage the fees provided for in ~~subdivisions (1) and (2) of this section but not in a percentage greater than fifty percent (50%) nor to an amount which will reduce the amount of the fees to be collected below the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year.~~ this section. If the estimated fees and assessments provided for under ~~subdivisions (1) and (2)~~ this section shall be less than the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year, then the State Banking Commission may increase by uniform percentage the fees provided for in ~~subdivisions (1) and (2) of~~ this section to an amount which will increase the amount of the fees and assessments to be collected to an amount at least equal to the estimated cost of maintaining the office of the Commissioner of Banks for the next fiscal year. ~~Such fees shall be reduced whenever a surplus exists which exceeds the estimated cost of operating the office of the Commissioner of Banks for one year, even if such reduction shall result in the collection of a smaller sum than the estimated cost of maintaining the office of the Commissioner of Banks for that year.~~ In no event shall any surplus at the end of any fiscal year resulting from the collection of fees and assessments pursuant to this section revert to the general fund.

(f) The Commissioner of Banks may collect the assessments provided for in subsection (a) of this section annually or in periodic installments as approved by the State Banking Commission."

Section 2. G.S. 53-184(b) reads as rewritten:

"(b) Each licensee shall file annually with the Commissioner of Banks on or before the thirty-first day of March for the 12 months' period ending the preceding December 31, reports on forms prescribed by the Commissioner. ~~Such reports~~ Reports shall disclose in detail and under appropriate headings the ~~resources,~~ assets

and liabilities of ~~such licensee at the beginning and at the end of the period,~~ the licensee, the income, expense, gain, loss, ~~and a reconciliation of surplus or net worth with the balance sheets, the ratios of the profits to the assets reported, the monthly average number and amount of loans outstanding and a classification of loans made, by size and by security,~~ and ~~such~~ any other information as the Commissioner may require. ~~Such reports~~ Reports shall be verified by the oath or affirmation of the owner, manager, president, vice-president, cashier, secretary or treasurer of ~~such~~ the licensee."

Section 3. G.S. 53-184(d) is repealed.

Section 4. This act becomes effective January 1, 1998, and applies to assessments due for years beginning with 1998.

EXPLANATION OF HOUSE BILL 400:
Bank Assessments

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 18, 1997
SPONSOR: Representatives Tallent and Ramsey
Agency Bill

House Bill 400 more evenly distributes the cost of operating the Office of the Commissioner of Banks among the state-chartered banks and non-bank operations supervised by the agency. In response to a state audit of the Office of the Commissioner of Banks, the Banking Commission conducted a study and found that the current assessment schedule causes a disproportionate burden on large banks while the assessment on other banks does not cover the direct cost of their examinations. It also found that the bank assessments are currently supplementing the cost of regulating the non-bank operations in the agency. Under the bill, the total assessments proposed will be less than those currently authorized under the statute. Under the assessments proposed by the bill, most state-chartered banks will see a decrease in their assessments, and the consumer finance licensees will see an increase in their assessments.

The Office of the Commissioner of Banks is receipt-supported. Although the Office is subject to the appropriation process, it does not derive its financial support from the General Fund. The statute sets the fees and assessments payable by the banks and consumer finance licensees regulated by the Office. The amount of fees and assessments collected should not exceed the costs of operating and maintaining the Office of the Commissioner of Banks. The Banking Commission has the authority to increase or decrease the fees and assessments by a uniform percentage to ensure that they equal, to as close a degree as possible, the actual expenses of the Office. The assessment schedule has not been changed since 1979.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 400
SHORT TITLE: Bank Assessments/AB
SPONSOR(S): Representatives Tallent, et al.

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Assessments Bank Inst.	Current revenue $3,071,000 million annually				
Assessment Finance Co.	Current revenue $494,000 annually				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Banking Commission

EFFECTIVE DATE: Assessments due on or after January 1, 1998

BILL SUMMARY:

The proposed act amends G.S. 53-122 by replacing the existing assessment schedule with a new assessment schedule and authorizing a new reporting procedure.

Examiners of the State Banking Commission examine bank and consumer finance company records to verify all reports made to the Commissioner of Banks. The current examination assessment schedule on banks is $85.00 for the first $100,000 in assets and $12.00 per $100,000 in assets over $100,000. The current examination assessment schedule on consumer finance companies is $170.00 for the first $100,000 in assets and $12.00 per $100,000 in assets over $100,000.

The new schedule proposed in this act is as follows:

Bank Assessment Schedule

First $50 million of Assets	$6,000
$50 million to $250 million	$12 per $100,000
$250 million to $500 million	$9 per $100,000
$500 million to $1 billion	$7 per $100,000
$1 billion to $10 billion	$5 per $100,000
Assets over $10 billion	$3 per $100,000

Consumer Finance Assessment Schedule

$18 per $100,000 of assets
Plus $300 per office
Minimum annual assessment $494,000

Under the current law, institutions are required to pay the assessment in full to the Commissioner of banks within ten days after an assessment has been made. This act authorizes the Commissioner of Banks, acting at the direction of the State Banking Commission, to collect the assessment either annually or in periodic installments.

The requirement, under G.S. 53-184(d), that affiliated lenders file composite annual reports in addition to separate reports is repealed.

ASSUMPTIONS AND METHODOLOGY:

Under G.S. 53-122, the State Banking Commission is required to set the assessment fees to cover the operations expense of maintaining the office. In addition, the Commission collects business license fees, \ registration fees, and other fines, penalties, and assessments to cover the cost of operating the Commission. The Commission is entirely receipt supported; no General Fund moneys are appropriated to cover the activities and operations of the Commission.

In the first half of the year the Commission reviews the estimated cost of operating the office. If the fees used in generating the revenue for the Commission exceeds the estimated cost, the Commission is authorized to reduce all of the examination fees by a uniform amount so to meet the estimate. In the past, the Commission has had to adjust these fees to prevent ending a year in surplus. According to representatives of the State Banking Commission the new fee schedule, outlined in this act, will prevent the need to readjust fees.

Information provided by the State Banking Commission and the revenue collected is expected to cover the cost of operating the office for fiscal year 1997-98.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk & Jennifer Herrera
APPROVED BY:
DATE: May 14,1997

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill ~~751~~ 400

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

400
H~~751~~-ALCF-20

Date 6-18, 1997

Comm. Sub. []
Amends Title []

1 moves to amend the bill on page 4, lines 20 and 27,
2 by adding the phrase "and assessments" after the word "fees" each
3 time it appears.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/18/'97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Smith	NCLM
R Rogers	EANR
Rhett White	NC Aquariums
David Griffin	" "
Sarah Fidler	DEHNR
Archibald Clan	NCCPJ
Larry Stedman	NC Funeral Dir. Assoc.
Ann Freneau	Carolina Permanente Med. Gp., Durham
Jan Everhart	DOJ
Irene Smith	CCOB
McNeil Clayton	AG's office

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/18/'97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Otis M. Beacham	Deputy Commissioner of Banks
Rick Riddle	N.C.D.O.C.
Tom Moore	Sprint
Ann Franklin	Burc. Co.
Tom Mundle	NCACC
John Nichols	Maupin Taylor + Ellis PA
Chris Volkmann	N.C. Board of Nursing
Jim McIntyre	DCR
Leticia Ropez	EDA PA
Natalie Hawkins	
Lynn Fick Cooper	

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, June 19, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS)**810** Nash Room Tax/Rocky Mount Annex
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **400** Bank Assessments/AB
Draft Number: PCS1407
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**136** Late Video Return/Sales Tax
Draft Number: PCS7332
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS)**460** Abolish Aquariums Commission/AB
Draft Number: PCSA395
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment: HB 136, 400,460,810 in 6-18-97 Committee

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 25, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on June 25, 1997, with Senator Kerr presiding. There were 20 members present.

H. B. 549 - Asheville/Biltmore Boundary

Representative Ives was not present and Senator Ledbetter explained the bill. Senator Dannelly moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

S.B. 483 - Physician Service See

Senator Lucas was recognized as the bill sponsor, and upon motion by Senator Conder a proposed subcommittee substitute was adopted for discussion. Senator Lucas explained her bill. Also speaking in support of this bill were Fred Allen, North Carolina Aggregates Association and Susan Randolph, DEHNR, and with the Occupational Environment Epi. On motion by Senator Dannelly, the committee gave the committee substitute for S.B. 483 a "favorable" report. Copy of bill, committee substitute and fiscal note included in the minutes.

H.B. 754 - Illicit Liquor Tax

Representative Dickson was not present for the committee meeting and Ms. Cindy Avrette explained the bill. Speaking in support of the bill was Richard Riddle with the Department of Revenue. After discussion, Senator Hoyle moved for a "favorable" report and the motion carried. Copy of bill and fiscal note included in the minutes.

H.B. 311 - Escheat Sunset Removed

Representative Cansler was not present and Senator Conder was recognized to explain this bill. This bill had previously been before the committee and after discussion, Senator Conder moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

H. B. 847 - Water Auth. Powers

Representative Culp was recognized to explain this bill and a proposed committee substitute was adopted by the committee on motion. Martha Walston, Staff Attorney, as recognized for a further explanation of the bill. Senator Gulley made a motion that this bill be referred to a subcommittee for further study and the motion carried. Subcommittee will be appointed. Copy of bill and fiscal note included in the minutes.

H.B. 867 - Matthews Annexation/Zoning

This bill had previously been before the committee and on motion by Senator Winner the bill was given a "favorable" report and the motion carried. Copy of bill included in the minutes.

H.B. 832 - Newland/Spruce Pine Tax Payment

Representative Thompson was recognized to explain this bill and Senator Foxx sent forth an amendment. On motion by Senator Foxx, the amendment was adopted and on motion by Senator Ballantine the bill, as amended, was given a "favorable" report by the committee. Copy of bill and amendment included in the minutes.

H.B. 789 - Town of Oakboro

Senator Larry Shaw was recognized to explain this bill since Representative Barbee could not be present. On motion by Senator Blust the bill was given a "favorable" report by the committee. Copy of bill included in the minutes.

Senator Kerr announced the following to serve as a subcommittee on H.B. 847:

Senator Lee, Chairman
Senator Gulley
Senator Phillips
Senator Bob Shaw
Senator Blust

H.B. 655 - Madison Annexation

H. B. 655 was explained by Senator Foxx and on motion by Senator Ballantine, the bill was given a "favorable" report by the committee. Copy of bill included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

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

Attachment #1

SENATE FINANCE COMMITTEE
JUNE 25, 1997
ROOM 544

S.B. 483 - Physician Service Fee - Sen. Lucas

H.B. 311 - Escheat Sunset Removed - Rep. Cansler

H.B. 549 - Asheville/Biltmore Boundary - Rep. Ives

H.B. 754 - Illicit Liquor Tax - Rep. Dickson

H.B. 789 - Town of Oakboro - Rep. Barbee

H.B. 832 - Newland/Spruce Pine Tax Payment - Rep. Thompson

H.B. 847 - Water Auth. Powers - Rep. Culp

H.B. 867 - Matthews Annexation/Zoning - Rep. Gulley

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 549

Short Title: Asheville/Biltmore Boundary. (Local)

Sponsors: Representatives Ives; and Cansler.

Referred to: Local and Regional Government II, if favorable, Finance.

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO EXCHANGE TRACTS OF LAND BETWEEN THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE AND THE TOWN OF BILTMORE FOREST.

The General Assembly of North Carolina enacts:

Section 1. All of the area included in the following property description is hereby removed from the corporate limits of the Town of Biltmore Forest and added to the corporate limits of the City of Asheville:

That certain tract of land located in Biltmore Forest Township, Buncombe County, North Carolina, and more particularly described as follows:

BEGINNING at an iron pipe set in the Southern margin of the right-of-way of I-40, said iron pipe being located North 77 degrees 31 minutes 5 seconds East 349.07 feet from a right-of-way monument with Grid Coordinates of N=676831.46, E=945825.03 (N.A.D. 1927); thence from said established BEGINNING point along the new municipal line between the City of Asheville and the Town of Biltmore Forest, the following eighteen calls: South 25 degrees 32 minutes 3 seconds East 17 feet to an iron pipe set; South 28 degrees 7 minutes 1 second East 65.72 feet to an iron pipe set; South 28 degrees 27 minutes 55 seconds East 89.48 feet to an iron pipe set; South 21 degrees 54 minutes 35 seconds East 43.19 feet to an iron pipe set; South 18 degrees 56 minutes 21 seconds East 43.05 feet to an iron pipe set; South 21 degrees 33 minutes 58 seconds East 97.71 feet to an iron pipe set; South 25 degrees 19 minutes 59 seconds East 90.57 feet to an iron pipe set; South 23 degrees 41 minutes 33 seconds East 60.32 feet to an iron pipe set; South 27 degrees 46 minutes 19 seconds

East 54.22 feet to an iron pipe set; South 29 degrees 52 minutes 23 seconds East 82.15 feet to an iron pipe set; South 42 degrees 6 minutes 19 seconds East 40.47 feet to an iron pipe set; South 42 degrees 37 minutes 5 seconds East 88.97 feet to an iron pipe set; South 37 degrees 3 minutes 52 seconds East 36.70 feet to an iron pipe set; South 36 degrees 8 minutes 48 seconds East 48.80 feet to an iron pipe set; South 28 degrees 12 minutes 2 seconds East 32.52 feet to an iron pipe set; South 20 degrees 56 minutes 24 seconds East 46.30 feet to an iron pipe set; South 31 degrees 28 minutes 47 seconds East 26.44 feet to an iron pipe set; and on a curve to the right in a Southeasterly direction with a radius of 651.99 feet, a chord of South 51 degrees 22 minutes 50 seconds East 279.94 feet and an arc distance of 282.13 feet to an iron pipe set; thence along the former municipal line between the City of Asheville and the Town of Biltmore Forest, North 5 degrees 0 minutes 48 seconds East 834.86 feet to an existing iron pin in the Southern margin of the right-of-way of I-40; thence along the Southern margin of the right-of-way of I-40 (marked by a right-of-way fence), the following five calls: North 45 degrees 19 minutes 19 seconds West 16.05 feet to a right-of-way monument; North 56 degrees 36 minutes 52 seconds West 394.89 feet to a right-of-way monument; south 89 degrees 10 minutes 19 seconds West 181.75 feet to a right-of-way monument; South 79 degrees 25 minutes 40 seconds West 185.49 feet to a right-of-way monument; and South 77 degrees 31 minutes 5 seconds West 47.71 feet to the point of BEGINNING, containing 10.1638 acres, more or less, and being Tract A on a survey by John B. Young, R.L.S., entitled "Property Exchange Map for the Town of Biltmore Forest and the City of Asheville", dated March 4, 1997, and designated as Job File Number 90086-D-591, reference to said survey being made in aid of description.

Section 2. Section 1 of this act shall have no effect upon the validity of any liens of the Town of Biltmore Forest for ad valorem taxes on special assessments that have attached prior to the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still within the corporate limits of the Town of Biltmore Forest.

Section 3. The City of Asheville shall initiate proceedings within 60 days from the date of this act to zone the tract described in Section 1 of this act to an appropriate classification within the City of Asheville's zoning ordinance.

Section 4. All of the area included in the following property description is hereby removed from the corporate limits of the City of Asheville and added to the corporate limits of the Town of Biltmore Forest:

That certain tract or parcel of land located in Asheville Township, Buncombe County, North Carolina, and more particularly described as follows:

BEGINNING at a point with Grid Coordinates of N=674912.28, E=947286.02 (N.A.D. 1927) and marking the Northernmost corner of Lot O as shown on plat recorded in Plat Book 2, at Page 39, of the Buncombe County, NC Register's Office, said point also marking the terminus of the second call known as Boundary Station 1 recorded in Deed Book 244, at Page 56, of the Buncombe County, NC Register's Office; then from said established BEGINNING point and moving along the former

municipal boundary line of Biltmore Forest and the City of Asheville, the following two calls: North 37 degrees 31 minutes 0 seconds West 777.23 feet to an existing concrete marker (City Limit Marker) described in Deed recorded in Deed Book 1642, at Page 252 and also being the terminus of the 16th call of Deed Book 79, at Page 1, both of the Buncombe County, NC Register's Office; and North 5 degrees 0 minutes 48 seconds East 208.16 feet to an iron pipe set; thence along the new municipal line between the Town of Biltmore Forest and the City of Asheville, the following ten calls: South 31 degrees 15 minutes 56 seconds East 253.98 feet to an iron pipe set; South 86 degrees 17 minutes 19 seconds East 238.87 feet to a point; South 3 degrees 42 minutes 41 seconds West 205.98 feet to a point; South 17 degrees 9 minutes 14 seconds East 84.38 feet to a point; South 36 degrees 34 minutes 52 seconds East 37.12 feet to a point; South 37 degrees 32 minutes 25 seconds East 136.55 feet to a point; South 15 degrees 11 minutes 6 seconds East 34.36 feet to a point; South 18 degrees 10 minutes 16 seconds East 44.02 feet to a point; South 23 degrees 57 minutes 48 seconds East 97.46 feet to a point; and South 31 degrees 26 minutes 2 seconds East 2.10 feet to a point; thence South 89 degrees 17 minutes 6 seconds West 95.34 feet to the point of BEGINNING, containing 3.1201 acres, more or less, and being a consolidated description of Tract D and Tract E as shown on a survey by John B. Young, R.L.S., entitled "Property Exchange Map for the Town of Biltmore Forest and the City of Asheville", dated March 4, 1997, and designated as Job File Number 90086-D-591, reference to said survey being made in aid of description.

Section 5. Section 4 of this act shall have no effect upon the validity of any liens of the City of Asheville for ad valorem taxes which have attached prior to the effective date of this act. Such liens may be collected or foreclosed upon after the effective date of this act as though the property were still in the corporate limits of the City of Asheville.

Section 6. The Town of Biltmore Forest shall initiate proceedings within 60 days from the effective date of this act to zone the tract described in Section 4 of this act to an appropriate classification within the Town of Biltmore Forest's zoning ordinance.

Section 7. If any provision of this act or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 483*

Short Title: Phys. Svces. Fee/AB. (Public)

Sponsors: Senators Lucas; Dannelly, Hartsell, Jordan, Kinnaird, McDaniel, Odom, and Shaw of Cumberland.

Referred to: Children & Human Resources.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT PAID TO PHYSICIANS TO READ X-RAY FILMS FOR THE DUSTY TRADES PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-72 reads as rewritten:

"**§ 97-72. Appointment of advisory medical committee; terms of office; duties and functions; salaries and expenses.**

(a) There shall be an advisory medical committee consisting of three members, who shall be licensed physicians in good professional standing and peculiarly qualified in the diagnosis or treatment of occupational diseases. They shall be appointed by the Industrial Commission with the approval of the Governor, and one of them shall be designated as chairman of the committee by the Industrial Commission. The members of committee shall be appointed to serve terms as follows: one for a term of two years, one for a term of four years, and one for a term of six years. Upon the expiration of each term as above mentioned the Industrial Commission shall appoint a successor for a term of six ~~years;~~ years. ~~except that the terms of the members first appointed shall expire June 30, 1936.~~ The function of the committee shall be to conduct examinations and make reports as required by G.S. 97-61.1 through 97-61.6 and 97-68 through 97-71, and to assist in any postmortem examinations provided for in G.S. 97-67 when so directed by the Industrial Commission. Members of the committee shall devote to the duties of the office so much of their time as may be required in the conducting of examinations with reasonable promptness, and they shall attend hearings as scheduled by the Industrial

Commission when their attendance is desired for the purpose of examining and cross-examining them respecting any report or reports made by them.

(b) The members of the advisory medical committee shall be paid one hundred dollars ($100.00) per month plus not more than ~~ten dollars ($10.00)~~ forty dollars ($40.00) per film examined. The fee per film shall be established by the Secretary of Environment, Health, and Natural Resources.

(c) Notwithstanding any other provision of this Article, the Industrial Commission, in its discretion, may designate a qualified physician who is not a member of the advisory medical committee to perform an examination of an employee who has filed a claim for benefits for asbestosis or silicosis. This physician shall file his reports in the same manner a member of the advisory medical committee files reports; and these reports shall be deemed reports of the advisory medical committee."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 483*
Proposed Committee Substitute S483-PCS7820

Short Title: Phys. Svces. Fee/AB. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT PAID TO PHYSICIANS TO READ X-RAY FILMS FOR THE DUSTY TRADES PROGRAM.

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Commission when their attendance is desired for the purpose of examining and cross-examining them respecting any report or reports made by them.

(b) The members of the advisory medical committee shall be paid one hundred dollars ($100.00) per month plus not more than ~~ten dollars ($10.00)~~ forty dollars ($40.00) per film examined. The fee per film shall be established by the Secretary of Environment, Health, and Natural ~~Resources.~~ Resources, as guided by the current Medicaid/Medicare reimbursement schedules for North Carolina.

(c) Notwithstanding any other provision of this Article, the Industrial Commission, in its discretion, may designate a qualified physician who is not a member of the advisory medical committee to perform an examination of an employee who has filed a claim for benefits for asbestosis or silicosis. This physician shall file his reports in the same manner a member of the advisory medical committee files reports; and these reports shall be deemed reports of the advisory medical committee."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 483 (Proposed Senate Finance Committee Sub)

SHORT TITLE: Physician Services Fees/ AB

SPONSOR(S): Senators Lucas, et al

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
DEHNR Receipt (Paid by Employers)	$105,000	$105,000	$105,000	$105,000	$105,000
EXPENDITURES					
DEHNR (Pass-through to physicians)	$105,000	$105,000	$105,000	$105,000	$105,000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health and Natural Resources(DEHNR) - N C Dusty Trades Program; N C Industrial Commission

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

BILL SUMMARY: The bill increases the maximum amount paid physicians to read x-rays for the Dusty Trades Program from $10 per film to $40 per film. When establishing a new rate, DEHNR will be "guided" by the Medicaid/Medicare reimbursement schedule for medical procedures and functions.

BACKGROUND: The North Carolina Dusty Trades program is an industrial hygiene program required by the North Carolina Workers' Compensation Act that is designed to ensure early detection of silicosis and asbestosis lung diseases. The act is enforced by the N C Industrial Commission and administered by the Department of Environment, Health and Natural Resources (DEHNR). The N C Industrial Commission appoints three physicians to an advisory medical

committee to conduct examinations and make reports as directed by the Commission. Each member of the committee receives $100 per month and up to $10 for each x-ray film examined. The $10 x-ray reading fee is charged to employers of workers in dusty trades such as aggregate mining. The collection of the fee from employers and the payment of the reading fee to physicians is handled by DEHNR. DEHNR does not retain any of the proceeds from the reading fee for its administrative expense. The fee was last changed in 1991 from $3 to $10.

ASSUMPTIONS AND METHODOLOGY: The physician who has served as the principal x-ray reader for the Dusty Trades Program since the late 1930's has accepted a $5 per x-ray film fee for his service. However, the standard industry rate for reading x-ray films ranges from $31 to $40 per film. There are only 14 physicians in the state qualified to read x-rays dealing with occupational lung diseases. DEHNR believes when the current physician retires, that no doctor will accept the task for less than $20 per film. DEHNR expects to negotiate a x-ray reading fee between $20 and $30 per film. If DEHNR were to follow the Medicaid/Medicare reimbursement schedule as advised by the bill, it would pay $7.90 per x-ray read.

The advisory medical committee reviews 3,000 x-rays each year. At $5 per film, industry pays $15,000 per year for this service. If DEHNR paid the committee the full $40 per film, $30 above the statutory rate and $35 above the current rate, then industry would pay an additional $105,000. This fiscal note assumes the rate will be set at the maximum $40 to illustrate the full potential impact of the bill.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington
DATE: June 24, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 754

Short Title: Illicit Liquor Tax. (Public)

Sponsors: Representative Dickson.

Referred to: Finance.

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO LEVY AN EXCISE TAX ON ILLICIT SPIRITUOUS LIQUOR, AN EXCISE TAX ON MASH, AND AN EXCISE TAX ON ILLICIT MIXED BEVERAGES.

The General Assembly of North Carolina enacts:

Section 1. Article 2D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2D.

"Schedule B-D. ~~Controlled Substance Tax.~~ Unauthorized Substances Taxes.

"**§ 105-113.105. Purpose.**

The purpose of this Article is to levy an excise tax to generate revenue for State and local law enforcement agencies and for the General Fund. Nothing in this Article may in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance.

"**§ 105-113.106. Definitions.**

The following definitions apply in this Article:

(1) Controlled Substance. -- Defined in G.S. 90-87.

(2) Repealed by Session Laws 1995, c. 340, s. 1.

(3) Dealer. -- Any of the following:

a. A person who actually or constructively possesses more than 42.5 grams of marijuana, seven or more grams of any other controlled substance that is sold by weight, or 10 or more dosage units of any other controlled substance that is not sold by weight.

b. A person who in violation of Chapter 18B of the General Statutes possesses illicit spirituous liquor for sale.

c. A person who in violation of Chapter 18B of the General Statutes possesses mash.

d. A person who in violation of Chapter 18B of the General Statutes possesses an illicit mixed beverage for sale.

(4) Repealed by Session Laws 1995, c. 340, s. 1.

(4a) ~~Reserved.~~ Illicit mixed beverage. -- A mixed beverage, as defined in G.S. 18B-101, composed in whole or in part from spirituous liquor on which the charge imposed by G.S. 18B-804(b)(8) has not been paid, but not including a premixed cocktail served from a closed package containing only one serving.

(4b) ~~Reserved.~~ Illicit spirituous liquor. -- Spirituous liquor, as defined in G.S. 105-113.68, not authorized by the North Carolina Alcoholic Beverage Control Commission. Some examples of illicit spirituous liquor are the products known as 'bootleg liquor', 'moonshine', 'non-tax-paid liquor', and 'white liquor'.

(4c) Low-street-value drug. -- Any of the following controlled substances:

a. An anabolic steroid as defined in G.S. 90-91(k).

b. A depressant described in G.S. 90-89(d), 90-90(d), 90-91(b), or 90-92(a).

c. A hallucinogenic substance described in G.S. 90-89(c) or G.S. 90-90(e).

d. A stimulant described in G.S. 90-89(e), 90-90(c), 90-91(j), 90-92(d), or 90-93(a)3.

e. A controlled substance described in G.S. 90-91(c), (d), or (e), 90-92(c), (e), or (f), or 90-93(a)1.

(5) Repealed by Session Laws 1995, c. 340, s. 1.

(6) Marijuana. -- All parts of the plant of the genus Cannabis, whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, salt, derivative, mixture, or preparation of this plant, its seeds, or its resin.

(6a) Mash. -- The fermentable starchy mixture from which spirituous liquor can be distilled.

(7) Person. -- Defined in G.S. 105-228.90.

(8) Secretary. -- Defined in G.S. 105-228.90.

(9) Unauthorized substance. -- A controlled substance, an illicit mixed beverage, illicit spirituous liquor, or mash.

"**§ 105-113.107. Excise tax on ~~controlled~~ unauthorized substances.**

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

(1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated

from and are not mixed with any other parts of the marijuana plant.

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

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

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

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

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

(b) Illicit Spirituous Liquor. -- An excise tax is levied on illicit spirituous liquor possessed by a dealer at the following rates:

(1) At the rate of thirty-one dollars and seventy cents ($31.70) for each gallon, or fraction thereof, of illicit spirituous liquor sold by the drink.

(2) At the rate of twelve dollars and eighty cents ($12.80) for each gallon, or fraction thereof, of illicit spirituous liquor not sold by the drink.

(c) Mash. -- An excise tax is levied on mash possessed by a dealer at the rate of one dollar and twenty-eight cents ($1.28) for each gallon or fraction thereof.

(d) Illicit Mixed Beverages. -- A tax is levied on illicit mixed beverages sold by a dealer at the rate of twenty dollars ($20.00) on each four liters and a proportional sum on lesser quantities.

"§ 105-113.107A. Exemptions.

(a) Authorized Possession. -- The tax levied in this Article does not apply to a ~~controlled~~ substance in the possession of a dealer who is authorized by law to possess the substance. This exemption applies only during the time the dealer's possession of the substance is authorized by law.

(b) Certain Marijuana Parts. -- The tax levied in this Article does not apply to the following marijuana:

(1) Harvested mature marijuana stalks when separated from and not mixed with any other parts of the marijuana plant.

(2) Fiber or any other product of marijuana stalks described in subdivision (1) of this subsection, except resin extracted from the stalks.

(3) Marijuana seeds that have been sterilized and are incapable of germination.

(4) Roots of the marijuana plant.

"§ 105-113.108. Reports; revenue stamps.

The Secretary shall issue stamps to affix to ~~controlled~~ unauthorized substances to indicate payment of the tax required by this Article. Dealers shall report the taxes payable under this Article at the time and on the form prescribed by the Secretary. Dealers are not required to give their name, address, social security number, or other identifying information on the form. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

"§ 105-113.109. When tax payable.

The tax imposed by this Article is payable by any dealer who actually or constructively possesses ~~a controlled~~ an unauthorized substance in this State upon which the tax has not been paid, as evidenced by a stamp. The tax is payable within 48 hours after the dealer acquires actual or constructive possession of a non-tax-paid ~~controlled~~ unauthorized substance, exclusive of Saturdays, Sundays, and legal holidays of this State, in which case the tax is payable on the next working day. Upon payment of the tax, the dealer shall permanently affix the appropriate stamps to the ~~controlled~~ unauthorized substance. Once the tax due on ~~a controlled~~ an unauthorized substance has been paid, no additional tax is due under this Article even though the ~~controlled~~ unauthorized substance may be handled by other dealers.

"§ 105-113.110A. Interest and penalty.

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

"§ 105-113.111. Assessments.

Notwithstanding any other provision of law, an assessment against a dealer who possesses ~~a controlled~~ an unauthorized substance to which a stamp has not been affixed as required by this Article shall be made as provided in this section. The Secretary shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the Secretary. The Secretary shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for jeopardy assessments or the procedure set forth in G.S. 105-242, including causing execution to be issued immediately against the personal property of the dealer, unless the dealer files with the Secretary a bond in the amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use all means available to collect the tax, penalty, and interest from any

property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Article 9 of this Chapter.

"**§ 105-113.112. Confidentiality of information.**

Notwithstanding any other provision of law, information obtained pursuant to this Article is confidential and may not be disclosed or, unless independently obtained, used in a criminal prosecution other than a prosecution for a violation of this Article. Stamps issued pursuant to this Article may not be used in a criminal prosecution other than a prosecution for a violation of this Article. A person who discloses information obtained pursuant to this Article is guilty of a Class 1 misdemeanor. This section does not prohibit the Secretary from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

"**§ 105-113.113. Use of tax proceeds.**

(a) Special Account. -- The Secretary shall credit the proceeds of the tax levied by this Article to a special nonreverting account, to be called the State ~~Controlled~~ Unauthorized Substances Tax Account, until the tax proceeds are unencumbered. The Secretary shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis. Tax proceeds are unencumbered when either of the following occurs:

(1) The tax has been fully paid and the taxpayer has no current right under G.S. 105-267 to seek a refund.

(2) The taxpayer has been notified of the final assessment of the tax under G.S. 105-241.1 and has neither fully paid nor timely contested the tax under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

(b) Distribution. -- The Secretary shall remit seventy-five percent (75%) of the part of the unencumbered tax proceeds that was collected by assessment to the State or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. If more than one State or local law enforcement agency conducted the investigation, the Secretary shall determine the equitable share for each agency based on the contribution each agency made to the investigation. The Secretary shall credit the remaining unencumbered tax proceeds to the General Fund.

(c) Refunds. -- The refund of a tax that has already been distributed shall be drawn initially from the State ~~Controlled~~ Unauthorized Substances Tax Account. The amount of refunded taxes that had been distributed to a law enforcement agency under this section and any interest shall be subtracted from succeeding distributions from the Account to that law enforcement agency. The amount of refunded taxes that had been credited to the General Fund under this section and any interest shall be subtracted from succeeding credits to the General Fund from the Account."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 754
SHORT TITLE: Illicit Liquor Tax
SPONSOR(S): Representative Dickson

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	**$300,000 to $500,000 gain in beverage tax revenue**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue
Department of Crime Control and Public Safety

EFFECTIVE DATE: October 1, 1997

BILL SUMMARY:
The proposed act adds illegal spirituous liquor, mash, and illegally mixed beverages to the list of controlled substances subject to excise taxes under the Unauthorized Substance Taxes; Article 2D of General Statutes Chapter 105.

The excise tax on a dealer possessing illegal spirituous liquor for sale by the drink is set at $31.70 per gallon. If the controlled substance is not sold by the drink the tax is $12.80 per gallon. The excise tax on mash is $1.28 per gallon. Liquor purchased legally but sold by the drink illegally is taxed the same as beverages sold by the drink legally. The mixed beverage surcharge is $20.00 on a four liter bottle and a proportional sum on lesser quantities.

The revenue is to be distributed by the Secretary of Revenue in the following manner: seventy five percent goes to the law enforcement agency that conducted the investigation and the remaining twenty five percent goes to the State General Fund.

ASSUMPTIONS AND METHODOLOGY:
The tax rate on a gallon of illegally distilled liquor is based on the fractional portion of the charges authorized under G.S. 18B-804 on a U.S. gallon of liquor. The tax rate on illegally mixed beverages is the fractional portion of the mixed beverage surcharge, authorized under G. S. 18B-804(8), on a U.S. gallon of liquor. The per gallon tax rate on mash is based on the assumption that 100 gallons of mash will produce 10 gallons of liquor. This ratio is used by the Alcohol Law Enforcement Division to measure the capacity of a confiscated distillery.

The Department of Crime Control and Public Safety provided the amounts of illegally distilled liquor, mash, and liquor sold by the drink illegally that was confiscated in fiscal year 1995-96. The tax loss is calculated by applying the appropriate tax rate set-out in the bill to the gallons of illegal substance.

The amount of liquor confiscated from places selling liquor by the drink illegally was 9,115 gallons and the loss in mixed beverage tax revenue is $172,182. The loss in tax revenue from the 7,116 gallons of illegally distilled liquor confiscated is $91,085. Alcohol and law enforcement officers confiscated 57,760 gallons of mash and the revenue loss associated with this amount is $73,933. The total loss in excise tax revenue for fiscal year 1996-97 was $337,200.

Confiscation's of illegal liquor substances increased 108% in fiscal year 1995-96 over the year before and the Department reports an expected increase in this fiscal year over fiscal year 1995-96. They could not elaborate on a percentage increase because most of their investigations are continuing and they will not know the gallon amounts of substance confiscated until actions have been taken.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk
APPROVED BY:Tom Covington
DATE: April 30, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 311
Committee Substitute Favorable 3/26/97

Short Title: Escheat Sunset Removed. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE PERMANENT THE EXCLUSION OF FORFEITED RESERVATION DEPOSITS FROM THE ESCHEAT FUND.

The General Assembly of North Carolina enacts:

Section 1. Subsection (c) of Section 7A of Chapter 18 of the Session Laws of the Second Extra Session of 1996 reads as rewritten:

"(c) Subsection (a) of this section applies to funds held or collected by business associations on or after July 1, 1996. ~~Subsection (a) of this section expires June 30, 1997, but funds collected or held by business associations before June 30, 1997 shall not escheat.~~"

Section 2. G.S. 116B-23 reads as rewritten:

"**§ 116B-23. Exclusion for forfeited reservation deposits.**

~~Property or funds withheld by a business association as a penalty or forfeiture or as damages in the event a person who has reserved the services of the business association fails to make use of and pay for the services, regardless of any practice or policy of the business association related to the return of withheld funds, is not unclaimed or abandoned property.~~ A forfeited reservation deposit is not unclaimed or abandoned property. For the purposes of this section, the term 'reservation deposit' means an amount of money paid to a business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term does not include an application fee, a utility deposit, or a deposit made toward the purchase of real or personal property."

Section 3. This act is effective when it becomes law. All property or funds held as forfeited reservation deposits prior to the effective date of this act pursuant to G.S. 116B-23 shall not escheat.

EXPLANATION OF HOUSE BILL 311:
Escheat Sunset Removed (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 25, 1997
SPONSOR: Representative Cansler

House Bill 311 makes permanent the statute that excludes forfeited reservation deposits as a type of intangible property that may escheat to the State. Under current law, the exclusion will expire on June 30, 1997. The proposed committee substitute rewrites the statute to clarify what types of deposits do not escheat to the State.

Under the Escheat and Unclaimed Property Program, unclaimed or forgotten money or property belonging to North Carolina citizens for a specific period of time, usually five years or more, are reported and remitted to the State Treasurer. This property is placed in the Escheat Fund. The interest earnings of the Fund are remitted to the North Carolina State Education Assistance Authority to provide low interest student loans to North Carolina residents attending a public university pursuant to Article IX, Section 10 of the North Carolina Constitution. The State Treasurer's office makes a diligent effort to reunite the unclaimed property with its rightful owner.

North Carolina law recognizes over 100 different categories of unclaimed property, including savings and checkings accounts, utility deposits, uncashed checks, and safe deposit box contents. Prior to the 1996 law change, the audit policy of the Program was to consider nonrefundable room reservation deposits subject to escheat only if the deposits were refunded to some parties and not to others. The Program recognized that exceptions may be made to a policy not to refund a deposit when the customer could not fulfill the commitment due to illness, inclement weather, transportation, or other related problems. The change in the escheat law for forfeited room deposits occurred after an unclaimed property audit on a resort hotel revealed that the hotel had a policy of waiving nonrefundable room reservation deposits approximately 50% of the time. Under the audit policy, the remaining 50% should escheat to the State.

There have been no major changes made to the Escheat and Unclaimed Property Program since 1981 when legislation was enacted to give the Program greater authority in regard to enforcement of the escheat laws. In 1995, the National Conference of Commissioners on Uniform State Laws passed the Uniform Unclaimed Property Act. The 1996 legislation that enacted G.S. 116B-23 also included a study of the Program: its policies towards escheats and the effects of its policies on the economy and citizens of the State. This study was never undertaken.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 311 (Second Edition)
SHORT TITLE: Escheat Sunset Removed
SPONSOR(S): Proposed Committee Substitute

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	See section on assumptions and methodology.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Escheat and Unclaimed Property Program
Department of State Treasurer

EFFECTIVE DATE: Upon Ratification

BILL SUMMARY:
The proposed act removes the June 30, 1997 sunset which provides that forfeited reservation deposits are not subject to escheat and clarifies that some reservation deposits can be retained by a business association.

Reservation deposits are defined in the act as an amount of money paid to a business association to guarantee a specific service such as a hotel room or restaurant reservation. The act clarifies that such deposits may be retained by the business association if the person making the deposit fails to make use of the service. The forfeited reservation deposit are not considered unclaimed or abandoned property subject to escheat.

BACKGROUND SUMMARY:
Prior to 1996, business associations that had a nonrefundable deposit policy and violated that policy by refunding some parties and not others having similar circumstances, were required to escheat the unclaimed money after five years. In 1996, the General Assembly passed temporary legislation that excluded forfeited reservation deposits from escheat regardless of any practice or policy of a business association. House Bill 311 removes the sunset and clarifies that such deposits can be retained by the business.

ASSUMPTIONS AND METHODOLOGY:
The Department of State Treasurer reports that there will be a minimal loss to the Escheat Fund and to the North Carolina Education Assistance Authority. [Interest earnings on the principal in the Escheat Fund are used to provide low interest student loans to North Carolina residents attending public universities.] The actions of the 1996 General Assembly prohibited Escheat Fund audits from identifying forfeited room deposits prior to July 1, 1996. The violation of forfeited room deposits subject to escheat is normally discovered through audit procedures. The department does not have sufficient audit records, recording forfeited room and reservation deposits, to prepare an estimate on future losses.

The only information available, as to a fiscal impact, is a record of audits conducted by the Escheat Program in 1996. At least three audits were performed that year on separate resort hotels and one of the resorts was identified as having violated its nonrefundable deposit policy. The balance in room deposits held by the resort was $1.1 million. The Escheat Program did not collect the $1.1 million because of the 1996 actions of the General Assembly.

If North Carolina fails to collect unclaimed or forfeited room and reservation deposits from a business association that is located in this State but incorporated in another state then the property is subject to escheat in the state of incorporation.
Texas v. New Jersey (§ 2.05[4][a][I],infra.)

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk
APPROVED BY:
DATE: March 25, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 847
Committee Substitute Favorable 5/12/97

Short Title: Addit. Powers/Certain Water Auth. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO ENTER INTO CERTAIN AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162A-6 is amended by adding a new subdivision to read:

"(17) Each authority created under G.S. 162A-3.1 and its participating political subdivisions may enter into agreements obligating these subdivisions to make payments to the authority for treated water delivered or made available or expected to be delivered or made available by the authority, regardless of whether treated water is actually delivered or made available. Such payments may be designed to cover the authority's operating costs (including debt service and related amounts) by allocating those costs among the participating political subdivisions and by requiring these subdivisions to pay additional amounts to make up for the nonpayment of defaulting subdivisions. The participating political subdivisions may agree to budget for and appropriate such payments. Such payment obligations may be made absolute, unconditional and irrevocable and required to be performed strictly in accordance with the terms of such agreements and without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the authority is completed, operable or operating and notwithstanding the

suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and such obligations may be made subject to no reduction, whether by offset or otherwise, and not conditioned upon the performance or nonperformance of the authority or any participating political subdivision under any agreement. Such payment obligations are in consideration of any output or capacity that may at any time be available from facilities of the authority. The participating political subdivisions may agree to make such payments from limited or specified sources. To the extent such payments relate to debt service of the authority and related amounts, they may not be made from any moneys derived from exercise by the participating political subdivisions of their taxing power, and such payment obligations shall not constitute a pledge of such taxing power. The participating political subdivisions may agree (i) not to pledge or encumber any source of payment and (ii) to operate (including fixing rates and charges) in a manner that enables them to make such payments from such sources. The participating political subdivisions may also secure such payment obligations with a pledge of or lien upon any such sources of payment. Notwithstanding the provisions of G.S. 162A-9 or any other law to the contrary, an authority entering into any such agreement need not fix rates, fees and other charges for its services except as provided herein, and such rates, fees and charges need not be uniform through the authority's service areas. Notwithstanding the provisions of G.S. 160A-322 or any other law to the contrary, agreements described herein may have a term not exceeding 50 years. Notwithstanding any law to the contrary, the execution and effectiveness of any agreement authorized hereby shall not be subject to any authorizations or approvals by any entity except the parties thereto. Each authority and its participating political subdivisions shall have the power to do all acts and things necessary or convenient to carry out the powers granted by this subdivision. This subdivision applies only to authorities created under G.S. 162A-3.1 at least half the participating political subdivisions of which have populations of at least 65,000 according to the most recent decennial federal census."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 847
Committee Substitute Favorable 5/12/97
PROPOSED SENATE COMMITTEE SUBSTITUTE
H847-CSRB-1

Short Title: Addit. Powers/Certain Water Auth. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO ENTER INTO CERTAIN AGREEMENTS AND TO AUTHORIZE A WATER AND SEWER AUTHORITY HOLDING A CERTIFICATE UNDER G.S. 162A-7 TO EXERCISE THE POWER OF EMINENT DOMAIN FOR SPECIFIED PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162A-6 reads as rewritten:

"**§ 162A-6. Powers of authority generally.**

(a) Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each ~~such~~ authority ~~is, subject to the provisions of G.S. 162A-7, hereby~~ is authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;

(6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;

(7) To issue revenue refunding bonds of the authority as hereinafter provided;

(8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;

(9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;

(10) To acquire in the name of the authority by gift, grant, purchase, devise, exchange, lease, acceptance of offers of dedication by plat, or any other lawful method, to the same extent and in the same manner as provided for cities and towns under the provisions of G.S. 160A-240.1 and G.S. 160A-374, or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this Article shall not vest in the taker any rights by prescription; provided, further, that nothing in this section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to

any authority of which such municipality may become a member;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Article;

(12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, copartnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;

(13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided;

(14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and

(14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary

collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer, respectively, to the authority and to the official or employee of the authority who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the Executive Director or other administrative officer designated by the authority to perform the functions described in said sections of the statute.

(14b) To provide for the defense of civil and criminal actions and payment of civil judgments against employees and officers or former employees and officers and members or former members of the governing body as authorized by G.S. 160A-167, as amended.

(14c) To adopt ordinances to regulate and control the discharge of sewage or stormwater into any sewerage system owned or operated by the authority and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types. Prior to the adoption of any such ordinance or any

amendment to any such ordinance, the authority shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance which it is proposed that the authority adopt. The declaration of intent shall be submitted to each governing body for review and comment. The authority shall consider any comment or suggestions offered by any governing body with respect to the proposed ordinance or amendment. Thereafter, the authority shall be authorized to adopt such ordinance or amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body.

(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for

properties that are connected. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State Planning Officer.

(15) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

(16) To purchase real or personal property as provided by G.S. 160A-20, in addition to any other method allowed under this Article.

(b) In addition to the powers given under subsection (a) of this section, an authority created under G.S. 162A-3.1 and its participating political subdivisions may enter into agreements obligating these subdivisions to make payments to the authority for treated water delivered or made available or expected to be delivered or made available by the authority, regardless of whether treated water is actually delivered or made available. Such payments may be designed to cover the authority's operating costs (including debt service and related amounts) by allocating those costs among the participating political subdivisions and by requiring these subdivisions to pay additional amounts to make up for the nonpayment of defaulting subdivisions. The participating political subdivisions may agree to budget for and appropriate such payments. Such payment obligations may be made absolute, unconditional and irrevocable and required to be performed strictly in accordance with the terms of such agreements and without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the authority is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and such obligations may be made subject to no reduction, whether by offset or otherwise, and not conditioned upon the performance or nonperformance of the authority or any participating political subdivision under any agreement. Such payment obligations are in consideration of any output or capacity that may at any time be available from facilities of the authority. The participating political subdivisions may agree to make such payments from limited or specified sources. To the extent such payments relate to debt service of the authority and related amounts, they may not be made from any moneys derived from exercise by the participating political subdivisions of

their taxing power, and such payment obligations shall not constitute a pledge of such taxing power. The participating political subdivisions may agree (i) not to pledge or encumber any source of payment and (ii) to operate (including fixing rates and charges) in a manner that enables them to make such payments from such sources. The participating political subdivisions may also secure such payment obligations with a pledge of or lien upon any such sources of payment. Notwithstanding the provisions of G.S. 162A-9 or any other law to the contrary, an authority entering into any such agreement need not fix rates, fees and other charges for its services except as provided herein, and such rates, fees and charges need not be uniform through the authority's service areas. Notwithstanding the provisions of G.S. 160A-322 or any other law to the contrary, agreements described herein may have a term not exceeding 50 years. Notwithstanding any law to the contrary, the execution and effectiveness of any agreement authorized hereby shall not be subject to any authorizations or approvals by any entity except the parties thereto. Each authority and its participating political subdivisions shall have the power to do all acts and things necessary or convenient to carry out the powers granted by this subdivision. This subsection applies only to authorities created under G.S. 162A-3.1, at least half the participating political subdivisions of which have populations of at least 65,000 according to the most recent decennial federal census.

(c) In addition to the powers given under subsections (a) and (b) of this section, an authority that holds a certificate issued by the Environmental Management Commission under G.S. 162A-7 (repealed) may acquire property by the power of eminent domain or by gift, purchase, grant, exchange, lease, or any other lawful method for one or more of the following purposes:

1. To relocate a road or to construct a road necessitated by construction of water supply project.
2. To establish, extend, enlarge, or improve storm sewer and drainage systems and works, or sewer and septic tank lines and systems.
3. To establish drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.
4. To acquire property for wetlands mitigation."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 867

Short Title: Matthews Annexation/Zoning. (Local)

Sponsors: Representative Gulley.

Referred to: Local and Regional Government II, if favorable, Finance.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE GENERAL LAW APPLIES TO ANNEXATION OF CERTAIN PARCELS OF LAND BY THE TOWN OF MATTHEWS AND TO EXEMPT THOSE PARCELS FROM PRIOR LOCAL ACTS CONCERNING ZONING JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. Nothing in Chapter 567 of the 1989 Session Laws or any other local act prohibits annexation by the Town of Matthews of Mecklenburg County tax parcels 215-062-01, 215-062-02, 215-063-01, or 215-081-15. Annexation of such parcels is governed by Article 4A of Chapter 160A of the General Statutes, and this section conveys no annexation authority beyond that of Article 4A of Chapter 160A of the General Statutes.

Section 2. Except for tax parcels 215-062-01, 215-062-02, 215-063-01, and 215-081-15 as they exist on the effective date of this act, the authority of Chapter 161 of the 1991 Session Laws is extended to the area previously limited by Section 4 of that act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 832

Short Title: Newland/Spruce Pine Tax Payment. (Local)

Sponsors: Representatives Thompson; and Buchanan.

Referred to: Local and Regional Government II, if favorable, Finance.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWN OF NEWLAND IN AVERY COUNTY AND THE TOWN OF SPRUCE PINE IN MITCHELL COUNTY BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 2. The Register of Deeds of Mitchell County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Mitchell County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects

taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Spruce Pine, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property.

Section 3. This act becomes effective August 1, 1997, and applies to deeds recorded on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 832

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

H832-ARB-1 Page 1 of __

Date_____,1997

Comm. Sub. []
Amends Title [YES]

Senator Foxx

moves to amend the bill on page 1, lines 2 through 5, by rewriting the lines to read:
"AN ACT TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF NEWLAND AND SPRUCE PINE AND FOR THE COUNTIES OF MITCHELL AND STOKES BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES.";

and on page 2, lines 7 and 8, by inserting a new section between those lines to read:
"Section 3. Section 1 of Chapter 657 of the 1993 Session Laws reads as rewritten:
'Section 1. The ~~Register~~ Registers of Deeds of Ashe ~~County~~ and Stokes Counties shall not receive for recordation any deed unless the deed is accompanied by a certificate from the ~~Ashe~~ County Tax Collector to the effect that all delinquent taxes upon the property described in the deed offered for recordation have been paid.'";

and on page 2, line 8, by deleting "Section 3." and substituting "Section 4.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 789
Committee Substitute Favorable 4/29/97

Short Title: Town of Oakboro. (Local)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE BOUNDARIES OF THE TOWN OF OAKBORO.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 51 of the Private Laws of 1915, as amended by Chapter 18 of the Private Laws of 1929 and Chapter 254 of the 1993 Session Laws, reads as rewritten:

"Sec. 2 The corporate limits of the town are as follows:

BEGINNING AT A POINT in the centerline of NC 742 marked by a railroad spike in the present south corporate limits of the Town of Oakboro; thence, easterly 1113 feet across NC 742 and along the south property line of Parcels 6510 and 2637 (Map 6503) to the southeast corner of Parcel 2637, 1204 feet, to a corner with Parcel 2036 (Map 6503.02); thence, northeasterly 310 feet along the property line to the most easterly corner of Parcel 2036; thence, northwesterly, 2580 feet along the northeast property line of Parcel 2036 to a corner with Parcel 3130 (Map 6503.02); thence, northeasterly 380 feet along the property line of Parcel 3130 and continuing in the same line across the Norfolk and Southern Railway and NC 138 to a point in the north right-of-way line of NC 138.

Thence, southeasterly, 600 feet, along the north right-of-way line of NC 138 to the southeastern corner of Parcel 8456 (Map 6503); thence, northerly, 600 feet to the northeastern corner of Parcel 8456; thence, westerly 450 feet, to a corner with Lot 3 of the Whitley Estate (within Parcel 7947, Map 6503); thence, northerly, 660 feet along the east lot line of Lot 3 and across Alonzo Road (SR 1974) to the north right-

of-way line of Alonzo Road; thence, southwesterly, 700 feet, along the north right-of-way of Alonzo Road to a corner with Lot 4, Whitley Estate (within Parcel 3643, Map 6503); thence, northerly, 1000 feet, to the northwest corner of Lot 4; thence, westerly along the north lot line of Lot 5, Whitley Estate, and across St. Martin Road (First Street), 450 feet, to a point in the north right-of-way of St. Martin Road at the most southerly corner of Parcel 5215 (Map 6504.04); thence, northeasterly 930 feet along St. Martin Road to the eastern corner of Parcel 0817 (Map 6504.04); thence, northwesterly 770 feet along the eastern property lines of Parcels 0817, 8990, 5994, and the west property line of Parcel 8633 (Map 6504.04) to the southwest corner of Parcel 8633; thence northerly 1195 feet along the west property line of Parcel 8633 to the easternmost corner of Parcel 9086 (Map 6504.04); thence, 880 feet along the eastern property line of Parcels 9086, 7379, 7761, and 7867 (Map 6504.04) to northeastern corner of Parcel 7867; thence, westerly 370 feet to the west right-of-way of East Eighth Street (SR 1976); thence, southwesterly 3020 feet along East Eighth Street to the easternmost corner of Parcel 9226 (Map 6504.03); thence, northwesterly, 400 feet, along the property line of Parcel 5054 (Map 6504.03) to a corner with a new Parcel F09-4-3H (Map 6504.03); thence, meandering northeasterly and northwesterly, 300 feet, along the property line of Parcel F09-4-3H to a point in the south right-of-way line of E. Tenth Street; thence, northeasterly, 1530 feet, along the south right-of-way of E. Tenth Street to intersection with the southernmost corner of Parcel 993 (Map 6504); thence northwesterly along the East Tenth Street right-of-way line, 1020 feet, to the most easterly corner of Parcel 0520 (Map 6504.03); thence, meandering northwesterly, 1335 feet, along the northern property lines of Parcels 0520 and 7624 (Map 6504.03), across Pecan Drive, and along the north property lines of Parcels 4752 and 1797 (Map 6504.03) to the most northerly corner of Parcel 1797; thence, southwesterly, 1570 feet, along the southeast property lines of Parcels 9161 and 0356 (Map 6504) to the most southerly corner of Parcel 0356; thence, northwesterly 1035 feet along the southwest property lines of Parcels 0356, 5588, and 7871 (Map 6504) to a corner of Parcel 7871 which is also the most northerly corner of Parcel 3450 (Map 6504); thence, northerly 150 feet to the most easterly corner of Parcel 1795 (Map 6504); thence, meandering northerly 545 feet along the eastern property lines of Parcels 1795, 1858, and 1949 (Map 6504) to the most northerly corner of Parcel 1949; thence, northwesterly 1471 feet along the northeast property lines of Parcels 0382 and 9496 (Map 6504) and Parcels 9079, 9223, 8371, 6472, 6594, and 5676 (Map 5594) to the most northerly corner of Parcel 5676; thence, northeasterly 210 feet to a point in the southeastern property line of Parcel 7254 (Map 5594); thence, northwesterly 990 feet along the southwestern property line of Parcel 7254, across Parcel 2486 (Map 5594) to a point in the southeast right-of-way line of Big Lick Road (SR 1115).

Thence southwesterly 1450 feet along Big Lick Road to the northernmost corner of Parcel 0001 (Map 594); thence, southeasterly 970 feet along the east and north property lines of Parcels 0001 and 7264 (Map 5594) to the west right-of-way of Swift Road (SR 1110); thence, southerly 2400 feet along Swift Road to a point across from Lynn Road; thence northwesterly 395 feet to a point; thence, northerly 330 feet to a

point; thence, westerly 1586 feet to the westernmost corner of Parcel 5660 (Map 5594); thence southerly and westerly 1453 feet along the west property lines of Parcels 4776 and 0340 (Map 5594) to the southwest corner of Parcel 0340; thence, southeasterly 1778 feet to the southeastern corner of Parcel 0340; thence, northerly 1418 feet along the east property lines of Parcels 0340 and 4776 to a point; thence, northeasterly 774 feet to a point; thence, 920 feet easterly and along the north property line of Parcel 1959 (Map 5594) to the northeast corner of Parcel 1959 in the west right-of-way of Swift Road; thence southerly 200 feet along Swift Road to a point; thence, easterly 2270 feet across Swift Road and along the north property lines of Parcels 8542, 3462, 5359, and 2415 (Map 5594) to the northeast corner of Parcel 2415; thence, meandering 1955 feet along the southwestern property lines of Parcel 8907 (Map 5594) and Parcels 3743, 9938 and 3774 (Map 6504) to the southernmost corner of Parcel 3774; thence, 500 feet, southeasterly along the eastern property lines of Parcels 3640, 4229, and 4177 (Map 6504) to the intersection of W. Eleventh Street and Hurley Road (SR 1112); thence, 760 feet, continuing diagonally across the intersection of W. Eleventh and Hurley Road and along the eastern property lines of Parcel 5749 (Map 6503.01) and Parcel 3808 (Map 5593) to the centerline of the Norfolk & Southern Railroad; thence, 1600 feet, southeasterly, along the Railroad to a point; thence, 1470 feet, southwesterly along the northwestern property line of Parcel 7249 (Map 6503.01) to the most westerly corner of Parcel 7249; thence, easterly, 550 feet, to a point at the northwest corner of Parcel 3991 (Map 6503.01); thence, southerly, 190 feet, to the southwest corner of Parcel 3991 in the north right-of-way of Hamilton Road; thence, easterly, 40 feet, along the north right-of-way of Hamilton Road to a point.

Thence, southerly, 830 feet, across Hamilton Road and along the western property lines of Parcels 4475 and 4965 (Map 6503) to the westernmost corner of Parcel 4965; thence, southeastern, 920 feet, along the southwest property line of Parcel 4965, the northeast property line of Parcel 5584 (Map 6503.01), across NC 205, and along the northeast property line of Parcel 7324 (Map 6503.01) to the easternmost corner of Parcel 7324; thence, northeasterly, 1940 feet, along the southeastern and eastern property lines of Parcels 8456, 9597, 1789, and 3057 (Map 6503.01) and the east right-of-way of NC 205 to the south right-of-way of Coble Mill Road (SR 1152); thence, easterly, 1965 feet, along the Coble Mill Road south right-of-way to intersection with the west right-of-way line of Rocky River Road; thence, southerly 2620 feet, along the west right-of-way of Rocky River Road to a point approximately 250 feet south of James Road; thence, easterly 1975 feet, across Rocky River Road in a line with and following the southern property lines of Parcels 5656, 0712, 4832, 6877, 8961, 9953, 0914, and 1080 (Map 6503), to the west right-of-way line of NC 742; thence, southeasterly 75 feet to the POINT OF BEGINNING."

Section 2. This act becomes effective June 30, 1997.

FAV.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 655
Committee Substitute Favorable 4/24/97

Short Title: Madison Annexation. (Local)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT CONCERNING THE ANNEXATION OF NONCONTIGUOUS AREAS BY THE TOWN OF MADISON.

The General Assembly of North Carolina enacts:

Section 1. Effective as of midnight June 30, 1997, the noncontiguous area described herein which lies within the extraterritorial jurisdiction of the Town of Madison and is delineated on the Official Zoning Map of the Town of Madison is annexed to the Town of Madison:

BEGINNING AT A POINT being the intersection of the centerlines of State Highway 704 and Grogan Lake Road (SR 1178), thence east southeast approximately 1540 feet along the centerline of State Highway 704 to a point being the intersection of the centerline of State Highway 704 and Island Drive (SR 1169), thence south approximately 2420 feet to a point on the centerline of Island Drive parallel to the northernmost point of parcel 7916.16-74-6129, thence west southwest approximately 1910 feet along the northern boundary of said parcel to a point being the northwest boundary corner of said parcel, thence north approximately 1020 feet along the eastern and southeastern property boundaries of parcels 7906-65-3798 and 7906-76-7040, thence east approximately 565 feet to a point in the centerline of Grogan Lake Road (SR 1178), thence north approximately 320 feet to a point on the centerline of Grogan Lake Road (SR 1178) parallel to the southwest property boundary corner of parcel 7906-86-2975, thence east approximately 212 feet to a point being the southeast property corner of said parcel, thence north approximately 546 feet along the eastern property boundary lines of parcels 7906-86-2975, 7906-87-2073 and 7918-84-2298 to a

point being the northeast property boundary corner of parcel 7918-84-2298, thence west approximately 215 feet along the northern boundary of said parcel to the centerline of Grogan Lake Road (SR 1178), thence north approximately 200 feet along the centerline of Grogan Lake Road (SR 1178) to a point parallel to the southwest property boundary corner of parcel 7906.08-87-3727, thence east approximately 215 feet along the southern boundary of said parcel to a point being the southeast property boundary corner of said parcel, thence north approximately 400 feet along the eastern boundaries of parcels 7906.08-87-3727 and 7906.08-87-3937 to a point being the northeast property boundary corner of parcel 7906-87-3937, thence west approximately 215 feet to a point in the centerline of Grogan Lake Road (SR 1178) parallel to the northwest property boundary corner of said parcel, thence north approximately 476 feet along the centerline of Grogan Lake Road (SR 1178) to a point parallel to the southwest boundary corner of parcel 7915.05-28-3666, thence east approximately 211 feet to a point being the southeast boundary corner of said parcel, thence north approximately 221 feet to a point being the northeast boundary corner of said parcel, thence west approximately 208 feet to the centerline of Grogan Lake Road (SR 1178) to a point parallel to the northwest boundary corner of said parcel, thence north approximately 534 feet along the centerline of Grogan Lake Road (SR 1178) to the BEGINNING.

Section 2. G.S. 160A-58.1(b)(2) does not apply to the area set out in Section 1 of this act.

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

Attachment # 2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — June 25, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mac Bagley	N.C. Aggregates Assoc
Fred Allen	NC Aggregates Assn.
Duron Rozdolph	DEHNR, Occupa Env. Epi
Rich Riddle	N.C. P.O. Council
Tim Sowell	NCAIC4
Patrice Rankin	NCACC
Ron Aycock	NCACC
Jim Smith	NCLM
RANDY KNIGHT	NC Alcohol Law Enforcement
Ann Case	DEHNR
Anthony L Jenkins	Interest

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — June 25, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Lucas	NC DOR
Donna D Winner	Ed Hill
A B Small	BFT
Eddie Caldwell	NCHHA
David Ferrell	Hofa, McNamara, Caldwell, McElroy & Lutter PA
Mary Hancock	Travel & Tourism Coalition
Ruth Sappie	NCDOT
Jim Ritchey	TTA

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, June 26, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **311** Escheat Sunset Removed.
Sequential Referral: None
Recommended Referral: None

H.B. **549** Asheville/Biltmore Boundary.
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **655** Madison Annexation.
Sequential Referral: None
Recommended Referral: None

H.B. **754** Illicit Liquor Tax.
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **789** Town of Oakboro.
Sequential Referral: None
Recommended Referral: None

H.B. **867** Matthews Annexation/Zoning.
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

H.B. **832** Newland/Spruce Pine Tax Payment.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **483** Phys. Svces. Fee/AB.
Draft Number: PCS7820
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 8

Committee Clerk Comment: S 483 H 311 549 655 754 789 832 867

SENATE FINANCE COMMITTEE

TUESDAY, JULY 1, 1997

8:30 A.M. - ROOM 643 LOB

The Senate Finance Committee met. There were 20 members of the Committee present. Senator John H. Kerr, III, Co-Chairman, called the meeting to order and stated that Zachary Avrette, son of Cindy Avrette, Staff Counsel, was visit with us today. Senator Kerr introduced the Pages, they are Molly Jacobs from Gastonia, N. C., sponsored by Senator Hoyle, Daniel Jacobs, from Gastonia, N. C., sponsored by Senator Hoyle and Elizabeth Holz from Cape Carteret, N. C., sponsored by Senator Perdue.

H. B. 1057 Exempt Audiovisual Masters

Representative Grady came to explain the bill. Mrs. Cindy Avrette, Staff Counsel, explained the changes to the Bill in the proposed committee substitute. Senator Foxx made a motion for adoption of proposed committee substitute and a "favorable" report, motion passed with the Committee recommending that the bill be sent to Senate Appropriations.

H. B. 832 - Newland/Spruce Pine Tax Payment

Representative Thompson explained the bill. Mrs. Avrette, Staff Counsel, explained what the proposed committee substitute bill does. Senator Dannelly moved for a "favorable report on proposed committee substitute, motion passed. Senator Foxx made a motion for a "favorable" report, motion passed.

H. B. 681 - Roxboro Charter

Representative Wilkins explained the bill. Senator Wellons moved for a "favorable" report, motion carried.

H. B. 71 - Halifax-Roanoke Rapids Airport

Representative Crawford came to explain the bill. Senator Cochrane moved for a "favorable" report, motion carried.

H. B. 63 - River Bend Zoning/Annexation

Senator Perdue explained the bill. Senator Dannelly moved for a "favorable" report, motion carried.

H. B. 1061 - Disabled Sportsman Licenses

Representative McCombs explained the bill. Senator Hoyle sent forward an amendment to the bill and made a motion that same be adopted, motion passed. Senator Bob Shaw moved for a "favorable" report as amended and that bill be rolled into a committee substitute, motion passed. NOTE: Bill not reported out of Committee until July 2,. 1997.

S. B. 360 - Boat Number Fees

Senator Albertson explained the bill. Mr. Richard Hamilton, Assistant Director of the Wildlife Resources Commission, spoke on the bill. Senator Ballantine made a motion for a "favorable" report, motion passed.

S. B. 534 - Pleasant Garden Incorporation

Senator Robert Shaw came to explain the bill. Senator Dannelly moved for a "favorable" report, motion passed.

H. B. 299 - Vietnam Veterans Plates

Representative Sexton came to explain the bill. Mrs. Avrette explained what the bill and proposed committee substitute bill does. After a time of questions and discussion, Representative Sexton asked that the $10.00 fee be added to the bill. Senator Kerr stated that we would hold the bill until everyone is satisfied. Senator Hoyle stated that we should get the $10.00 fee so we do not change the current policy. Senator Hoyle sent forward a committee substitute bill with a $40.00 fee and he moved that we give the proposed committee substitute bill a "favorable" report, motion passed. NOTE: Bill was not reported out of Committee until 7-2-97.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report for 7-1-97 is Attachment # 3
Committee Report for 7-2-97 is Attachment # 4

Attachment #1

AGENDA

FOR

SENATE FINANCE MEETING

TUESDAY, JULY 1, 1997

ROOM 643 AT 8:30 A.M.

- SB 360 - BOAT NUMBER FEES - SEN. ALBERTSON
- HB 71 - HALIFAX-ROANOKE RAPIDS AIRPORT - REP. CRAWFORD
- HB 299 - VIETNAM VETERANS PLATES - REP. SEXTON
- HB 681 - ROXBORO CHARTER - REP. WILKINS
- HB 832 - NEWLAND/SPRUCE PINE TAX PAYMENT - REP. THOMPSON
- HB 1057 - EXEMPT AUDIOVISUAL MASTERS - REP. GRADY
- HB 1061 - DISABLED SPORTSMAN LICENSES - REP. MCCOMBS
- HB 63 - RIVER BEND ZONING/ANNEXATION - REP. NICHOLS
- SB 534 - PLEASANT GARDEN INCORPORATION - SEN. SHAW, GUILFORD

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1057*

Short Title: Exempt Audiovisual Masters. (Public)

Sponsors: Representatives Grady; McComas and Preston.

Referred to: Commerce, if favorable, Finance.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM SALES TAX AUDIOVISUAL MASTER TAPES USED IN THE MOTION PICTURE, TELEVISION, AND AUDIO PRODUCTION INDUSTRIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(22a) Sales of audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction. For the purpose of this subdivision, an 'audiovisual master' is an audio or video film, tape, or disk or another audio or video storage device from which all other copies are made. For the purpose of this subdivision, a production company is a person engaged in the business of making motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes."

Section 2. This act becomes effective July 1, 1997, and applies to sales made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1057*
Proposed Senate Committee Substitute H1057-PCSXA400

Short Title: Exempt Audiovisual Masters. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM SALES TAX AUDIOVISUAL MASTER TAPES USED IN THE MOTION PICTURE, TELEVISION, AND AUDIO PRODUCTION INDUSTRIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(22a) Sales of audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction. For the purpose of this subdivision, an 'audiovisual master' is an audio or video film, tape, or disk or another audio or video storage device from which all other copies are made. For the purpose of this subdivision, a production company is a person engaged in the business of making motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes."

Section 2. This act becomes effective October 1, 1997, and applies to sales made on or after that date.

EXPLANATION OF HOUSE BILL 1057:
Exempt Audiovisual Masters

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 27, 1997
SPONSOR: Representative Grady

House Bill 1057 is identical to Senate Bill 123, introduced by Senator Ballantine. The Senate Finance Committee gave Senate Bill 123 a favorable report on April 1, 1997. The bill was re-referred to the Appropriations Committee.

The bill creates a new State and local sales and use tax exemption. The new exemption is for audiovisual masters. An audiovisual master is the film, tape, or other storage device that is made or used by a production company to make more copies of the film or tape. The bill becomes effective July 1, 1997.

The tax at issue in this bill involves post-production work on a film, video, or commercial. Assume, for example, that a politician contracts with an advertising agency to have a political commercial made. The agency then films or contracts with others to film the politician in action. When the filming is completed, the agency contracts with a company to edit the film and put it in a finished form with sound and any narration. When the finished product (the audiovisual master) is delivered by the agency to the politician, a sales tax applies to the sale of that finished product. The tax is computed on the value of all the services that went into the finished product, such as acting fees or other charges.

According the North Carolina Film Office, most post-production work on films is done in California or New York but the post-production work on commercials and videos is done in many other places. South Carolina and Virginia do not tax audiovisual masters, so a lot of post-production work on commercials and videos is done in those states.

Technical Consideration:
The bill has a July 1, 1997, effective date. The effective date should be changed to October 1, 1997. That date will correspond with the Department's mailings of the new sales and use tax reports.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: House Bill 1057
SHORT TITLE: Exempt Audiovisual Masters
SPONSOR(S): Rep. Grady

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
State (General Fund)	**-$1.40**	**-$1.59**	**-$1.68**	**-$1.78**	**-$1.88**
Local	**-.70**	**-.80**	**-.84**	**-.89**	**-.94**

EXPENDITURES The enactment of the bill will have no impact on the budget requirements of the Department of Revenue.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Sales occurring on or after July 1, 1997

BILL SUMMARY: Exempts from state and local sales tax master tapes utilized by the motion picture, television, and audio production industries in making visual and aural first-generation images for reproduction.

ASSUMPTIONS AND METHODOLOGY: The estimate was developed through discussions with the Department of Revenue, the State Film Office, and a major company involved in post-production activities. The estimate is based on $37.5 million of taxable post-production activity in the State and 6% annual growth (based on state economic forecast). The exemption would not apply to the production of duplicate tapes.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: David Crotts
DATE: May 21, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 832

Short Title: Newland/Spruce Pine Tax Payment. (Local)

Sponsors: Representatives Thompson; and Buchanan.

Referred to: Local and Regional Government II, if favorable, Finance.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWN OF NEWLAND IN AVERY COUNTY AND THE TOWN OF SPRUCE PINE IN MITCHELL COUNTY BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 2. The Register of Deeds of Mitchell County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Mitchell County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects

taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Spruce Pine, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property.

Section 3. This act becomes effective August 1, 1997, and applies to deeds recorded on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 832
Proposed Senate Committee Substitute H832-PCSX7340

Short Title: Collect Delinquent Property Tax. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF NEWLAND AND SPRUCE PINE AND FOR THE COUNTIES OF ALLEGHANY AND STOKES BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES AND TO VALIDATE BUDGET PROCEDURES OF THE TOWN OF NORWOOD IN STANLY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 2. Section 1 of Chapter 537 of the 1987 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Mitchell County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Mitchell County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Spruce Pine, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 3. Section 1 of Chapter 657 of the 1993 Session Laws reads as rewritten:

"Section 1. The ~~Register~~ Registers of Deeds of ~~Ashe County~~ Alleghany, Ashe, and Stokes Counties shall not receive for recordation any deed unless the deed is accompanied by a certificate from the ~~Ashe~~ County Tax Collector to the effect that all delinquent taxes upon the property described in the deed offered for recordation have been paid."

Section 4. For the 1986-87 through 1996-97 fiscal years, the Town of Norwood, through the budgetary procedures it adopted and followed, is deemed to have adopted a budget ordinance and to have complied with all the requirements of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes. Taxes levied and collected by the Town of Norwood for those fiscal years are in all respects validated and confirmed. Appropriations and expenditures by the Town of Norwood for those fiscal years are in all respects validated and confirmed.

Section 5. Sections 1, 2, and 3 of this act become effective August 1, 1997, and apply to deeds recorded on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 681
Committee Substitute Favorable 4/23/97
Senate State Government, Local Government and Personnel Committee Substitute Adopted 5/21/97

Short Title: Roxboro Charter. (Local)

Sponsors:

Referred to: Finance.

March 31, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF ROXBORO.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Roxboro is revised and consolidated to read as follows:

"THE CHARTER OF THE CITY OF ROXBORO.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation.** The City of Roxboro, North Carolina, in Person County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'City of Roxboro', hereinafter at times referred to as the 'City'.

"Section 1.2. **Powers.** The City shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the City of Roxboro specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the City and as they may be altered from time to time in accordance with law. An official map of the City, showing the current municipal boundaries, shall be maintained permanently in the office of the City Clerk and shall be available for

public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made, and copies shall be filed in the office of the Secretary of State, the Person County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **City Governing Body; Composition.** The City Council, hereinafter referred to as the 'Council', and the Mayor shall be the governing body of the City.

"Section 2.2. **City Council; Composition; Terms of Office.** The Council shall be composed of five members to be elected by all the qualified voters of the City voting at large for terms of two years, or until their successors are elected and qualified.

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the City for a term of two years or until a successor is elected and qualified. The Mayor shall be the official head of the city government and shall preside at meetings of the Council, shall have the right to vote only when there is an equal division on any question or matter before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. **Mayor Pro Tempore.** The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Council.

"Section 2.5. **Meetings; Quorum.** In accordance with general law, the Council shall establish a suitable time and place for its regular meeting. Special and emergency meetings may be held as provided by general law. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.6. **Meetings; Voting.** An affirmative vote equal to a majority of the members of the Council not excused from voting on the issue (i.e., assuming no member is excused, three Council members) shall be required to adopt an ordinance, take any action having the effect of an ordinance, or make, ratify, or authorize any contract on behalf of the City. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two-thirds of the actual membership of the Council (excluding vacant seats), unless the Council has first held a public hearing on the ordinance. Therefore, assuming no vacant seats, unless the Council first holds a public hearing on an ordinance, that ordinance may not be adopted on the date it is introduced except by an affirmative vote of four Council members. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the Council. This section does not modify G.S. 159-17.

"Section 2.7. **Qualification for Office; Compensation; Vacancies.** The qualifications and compensation of the Mayor and Council members shall be in accordance with general law. Vacancies shall be filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election

laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan election and runoff election method as provided in G.S. 163-279(a)(4) and G.S. 163-293.

"Section 3.2. **Election of Mayor.** A Mayor shall be elected in each regular municipal election.

"Section 3.3. **Election of Council Members.** Five Council members shall be elected in each regular municipal election.

"Section 3.4. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The City shall operate under the council-manager form of government in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **City Manager; Appointment; Powers and Duties.** The Council shall appoint a City Manager who shall be responsible for the administration of all departments of the City government. The City Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law. The Council may require the City Manager to reside within the City during the City Manager's tenure of office. In case of the absence or disability of the City Manager, the Council may designate a qualified administrative officer of the City to perform the duties of the City Manager during such absence or disability.

"Section 4.3. **City Clerk.** The Council shall appoint a City Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Council may direct. The City Clerk shall be subject to the supervisory authority of the City Manager.

"Section 4.4. **Finance Director.** The City Manager shall appoint a Finance Director to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or assigned by the Manager.

"Section 4.5. **Tax Collector.** The Council shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the City, subject to general law, this Charter, and City ordinances.

"Section 4.6. **City Attorney.** The Council shall appoint a City Attorney licensed to practice law in North Carolina. It shall be the duty of the City Attorney to represent the City, advise City officials, and perform other duties required by law or as the Council may direct. The Council may appoint one or more Assistant City Attorneys to assist the City Attorney and to serve in the City Attorney's absence or incapacity and who shall have the same qualifications and duties as the City Attorney.

"Section 4.7. **Other Administrative Officers and Employees.** The Council may authorize other positions to be filled by appointment by the City Manager and may

organize the City government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. STREETS.

"Section 5.1. **Assessments for Street Improvements; Petition Unnecessary.** In addition to any authority granted by general law, the Council may, without the necessity of a petition, order street improvements according to standards and specifications of the City, and assess the total costs or a portion thereof against abutting property, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes, upon the following findings of fact:

(1) The street improvement project does not exceed 1,200 linear feet; and

(2) a. The street or part thereof is unsafe for vehicular traffic or creates a safety or health hazard, and it is in the public interest to make such improvement; or

b. It is in the public interest to connect two streets or portions of a street already improved; or

c. It is in the public interest to widen a street, or part thereof, which is already improved. Assessments for widening any street or portion of a street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with street classification and improvement standards established by the City's thoroughfare or major street plan for the particular street or part thereof.

"Section 5.2. **Street Improvement Defined.** For the purposes of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

"Section 5.3. **Procedure; Effect of Assessment.** In ordering street improvements without a petition and assessing the costs thereof under authority of this Article, the Council shall comply with the procedures provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and the sufficiency thereof. The effect of levying assessments under authority of this Article shall be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"Section 5.4. **Property Owner's Responsibility.** The Council shall have authority to require every property owner in the City to cut and remove limbs, branches, and parts of trees or shrubbery extending upon or overhanging the streets.

"Section 5.5. **City Cutting and Removal; Costs Become Lien.** The Council may, by ordinance, establish a procedure whereby City forces may cut and remove limbs, branches, and parts of trees or shrubbery extending upon or overhanging the streets after failure of the abutting property owner after 10 days' notice to do so. In such event, the cost of such cutting and removal shall become a lien upon the abutting

property equal to the lien for ad valorem taxes and may thereafter be collected either by suit in the name of the City or by foreclosure of the lien in the same manner and subject to the same rules, regulations, costs, and penalties as provided by law for the foreclosure of the lien on real estate for ad valorem taxes.

"ARTICLE VI. SIDEWALKS.

"Section 6.1. **Assessments for Sidewalk Improvements; Petition Unnecessary.** In addition to any authority granted by general law, the Council may, without the necessity of a petition, order sidewalk improvements or repairs according to standards and specifications of the City, and assess the total costs or a portion thereof against abutting property, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes. Regardless of the assessment basis or bases employed, the Council may order the costs of sidewalk improvements made only on one side of a street to be assessed against property abutting both sides of the street. In ordering sidewalk improvements or repairs without a petition and assessing the costs thereof under authority of this Article, the Council shall comply with the procedures provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and the sufficiency thereof. The effect of levying assessments under authority of this Article shall be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"Section 6.2. **Property Owner's Responsibility.** The Council shall have the authority to require every property owner in the City to keep clean and free of debris, trash, and other obstacles or impediments the sidewalks abutting the owner's property and to require every property owner in the City to cut and remove limbs, branches, and parts of trees or shrubbery extending upon or overhanging the sidewalks abutting the owner's property.

"Section 6.3. **City Cleaning or Repair; Costs Become Lien.** The Council may, by ordinance, establish a procedure whereby City forces may clean any sidewalk, remove therefrom any debris or trash, or cut and remove limbs, branches, and parts of trees or shrubbery extending upon or overhanging any sidewalk after failure of the abutting property owner after 10 days' notice to do so. In such event, the cost of the repair, cleaning, cutting, or removal shall become a lien upon the abutting property equal to the lien for ad valorem taxes and may thereafter be collected either by suit in the name of the City or by foreclosure of the lien in the same manner and subject to the same rules, regulations, costs, and penalties as provided by law for the foreclosure of the lien on real estate for ad valorem taxes.

"ARTICLE VII. WATER AND SEWER.

"Section 7.1. **Construction Outside Corporate Limits.** In addition to any authority granted by general law, the City is authorized to construct or reconstruct water and sewer lines and facilities outside the corporate limits of the City as the Council may deem appropriate, to furnish water and sewer services to industries outside the city limits, and to make such charges for the services as the Council may deem reasonable.

"Section 7.2. **Acquisition of Existing Facilities.** In addition to any authority granted by general law, the City is authorized to acquire, by purchase, gift, or exchange existing water and sewer lines and facilities located outside of the corporate limits of the City.

"ARTICLE VIII. TAXATION.

"Section 8.1. **Motor Vehicles Tax.** The City may levy a license or privilege tax upon motor vehicles resident therein in an amount up to ten dollars ($10.00) per year, or the amount prescribed by G.S. 20-97, whichever is greater.

"ARTICLE IX. CITY LAKE REGULATION.

"Section 9.1. **Regulation of City Lakes.** In addition to any authority granted by general law, the City is authorized, by ordinance, to regulate, restrict, or prohibit the use of any lakes owned by the City, to prescribe rules under which fishing, boating, and other uses may be permitted thereon, to fix charges for such uses, and to otherwise provide for their operation in accordance herewith. The provisions of any ordinance adopted under authority of this section shall not conflict with applicable State laws, rules, or regulations.

"ARTICLE X. CLAIMS AGAINST THE CITY.

"Section 10.1. **Settlement of Claims by City Manager.** The Council may authorize the City Manager to settle claims against the City for: (i) personal injuries or damages to property when the amount involved does not exceed the sum of five thousand dollars ($5,000) and does not exceed the actual loss sustained; and (ii) the taking of small portions of private property which are needed for the rounding of corners at intersections of streets when the amount involved in any such settlement does not exceed five thousand dollars ($5,000) and does not exceed the actual loss sustained. Settlement of a claim by the City Manager pursuant to this section shall constitute a complete release of the City from any and all damages sustained by the person involved in such settlement in any manner arising out of the incident, occasion, or taking complained of. All settlements and all releases shall be approved by the City Attorney.

"ARTICLE XI. PROPERTY DISPOSITION.

"Section 11.1. **Disposal of Surplus Personal Property.** The City may dispose of surplus personal property valued at less than two thousand dollars ($2,000) for any one item or group of items using the procedures authorized in G.S. 160A-266(c)."

Section 2. The purpose of this act is to revise the Charter of the City of Roxboro and to consolidate certain acts concerning the property, affairs, and government of the City. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Section 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Section 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 253, Private Laws of 1854-55

Chapter 268, Private Laws of 1854-55
Chapter 109, Private Laws of 1879
Chapter 92, Private Laws of 1881
Chapter 168, Private Laws of 1887
Chapter 71, Private Laws of 1899
Chapter 134, Private Laws of 1901
Chapter 303, Private Laws of 1903
Chapter 762, Public Laws of 1905
Chapter 142, Private Laws of 1907
Chapter 909, Public Laws of 1907
Chapter 244, Private Laws of 1913
Chapter 137, Private Laws of 1915
Chapter 125, Private Laws, Extra Session of 1921
Chapter 175, Private Laws of 1925
Chapter 84, Private Laws of 1927
Chapter 211, Public-Local Laws of 1941
Chapter 288, Session Laws of 1943, except for Section 3
Chapter 12, Session Laws of 1953
Chapter 502, Session Laws of 1955
Chapter 510, Session Laws of 1955
Chapter 42, Session Laws of 1957
Chapter 425, Session Laws of 1961
Chapter 619, Session Laws of 1963
Chapter 643, Session Laws of 1965, except for Section 5
Chapter 978, Session Laws of 1965.

Section 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified.

Section 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Section 7. All existing ordinances, resolutions, and other provisions of the City of Roxboro not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Section 8. No action or proceeding pending on the effective date of this act by or against the City or any of its departments or agencies shall be abated or otherwise affected by this act.

Section 9. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 71

Short Title: Halifax-Roanoke Rapids Airport. (Local)

Sponsors: Representatives Crawford; Wilkins and Hardaway.

Referred to: Local and Regional Government I, if favorable, Finance.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE COUNTY OF HALIFAX AND THE CITY OF ROANOKE RAPIDS TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. There is hereby created the "Halifax-Roanoke Rapids Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

Section 2. The Airport Authority shall consist of seven members, three of whom shall be appointed to staggered three-year terms by the Roanoke Rapids City Council and three of whom shall be appointed to staggered three-year terms by the Halifax County Board of Commissioners and one of whom shall be appointed by the other six members of the Airport Authority. The members appointed by the Roanoke Rapids City Council shall be qualified voters of the City of Roanoke Rapids, and the members appointed by the Halifax County Board of Commissioners and the Airport Authority shall be qualified voters of the County of Halifax. Each member shall take and subscribe before the Clerk of Superior Court of Halifax County an oath of office and file the same with the Halifax County Board of Commissioners and the Roanoke Rapids City Council. Membership on the Halifax County Board of Commissioners or the Roanoke Rapids City Council and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9 of the Constitution of North Carolina.

Section 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority shall receive compensation, per diem, or otherwise as the Roanoke Rapids City Council or the Halifax County Board of Commissioners from time to time determines and be paid their actual traveling expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

Section 4. (a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the County and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the City of Roanoke Rapids or the County of Halifax.

(2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the County.

(3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina, and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the City of Roanoke Rapids or the County of Halifax.

(5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.

(6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Halifax County Board of Commissioners and the Roanoke Rapids City Council.

(7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.

(8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.

(9) To purchase any of its outstanding bonds or notes.

(10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 25 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

(11) To contract with persons, firms, or corporations for terms not to exceed 25 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 25 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

(13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

(14) To have a corporate seal, which may be altered at will.

(b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

Section 5. The Airport Authority may acquire from the City and the County, by agreement with the City and County, and the City and County may grant and convey, either by gift or for such consideration as the City and County may deem

wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the County.

Section 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be acquired, owned, controlled, and occupied for a public purpose.

Section 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes.

Section 8. The Airport Authority shall make an annual report to the Halifax County Board of Commissioners and the Roanoke Rapids City Council setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Halifax County or the City of Roanoke Rapids, or any subdivision thereof, or to impose any obligation on Halifax County or the City of Roanoke Rapids, or any of their subdivisions, except when that power is expressly granted by statute.

Section 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect or enacted in the future relating to the development, regulation, and control of municipal airports and the regulation of aircraft are vested in the Airport Authority. The Halifax County Board of Commissioners or the Roanoke Rapids City Council may delegate their powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Halifax County and the City of Roanoke Rapids to control, regulate, and provide for the development of aviation in Halifax County.

Section 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

Section 11. The Airport Authority may employ any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

Section 12. The Halifax County Board of Commissioners or the Roanoke Rapids City Council may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Halifax County Board of Commissioners or the Roanoke Rapids City Council.

Section 13. The Airport Authority may expend the funds that are appropriated by the County and City for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

Section 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then annually thereafter. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

Section 15. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Halifax County Board of Commissioners and the Roanoke Rapids City Council, and nothing in this act shall require the Board of Commissioners or City Council to make the initial appointments. It is the intent of this act to enable but not to require the formation of the Halifax-Roanoke Rapids Airport Authority.

Section 16. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Section 17. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 63
Committee Substitute Favorable 2/18/97
Committee Substitute #2 Favorable 3/19/97

Short Title: River Bend Zoning/Annexation. (Local)

Sponsors:

Referred to:

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO RESTORE EXTRATERRITORIAL PLANNING POWERS OF THE TOWN OF RIVER BEND BUT PROHIBIT IT FROM MAKING INVOLUNTARY ANNEXATIONS.

The General Assembly of North Carolina enacts:

Section 1. Section VI of the Charter of the Town of River Bend, being that Charter approved by the Municipal Board of Control and filed with the Secretary of State on January 14, 1981, as added by Chapter 26 of the Session Laws of 1987, reads as rewritten:

"Section VI. ~~The Town may not exercise any extraterritorial jurisdiction or extraterritorial powers under Article 19 of Chapter 160A of the General Statutes.~~ (a) The city must hold a referendum on whether to annex an area into the city if the city council receives a petition opposing the annexation signed by twenty-five percent (25%) of the registered voters who own real property in the area proposed to be annexed. The petition must be received by the city council no later than the adjournment of the public hearing required to be held under G.S. 160A-37. If the city council receives such a petition, then the annexation ordinance shall become effective only if approved by the voters of the area proposed to be annexed.

(b) If a referendum is required under subsection (a) of this section, the city council shall order the board of elections which conducts elections for that city to call an election to determine whether or not the proposed territory shall be annexed to

the city or town. Within 90 days after receiving such order from the governing body, the county board of elections shall proceed to hold an election on the question.

Such election shall be called by a resolution or resolutions of said county board of elections which shall:

(1) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;

(2) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed; and

(3) Provide for registration of voters in the territory proposed to be annexed for said election in accordance with G.S. 163-288.2.

Said resolution shall be published in one or more newspapers of the said county once a week for 30 days prior to the closing of the registration books. All costs of holding such election shall be paid by the city or town. Except as herein provided, the election shall be held under the same statutes, rules, and regulations as are applicable to elections in the municipality whose corporate limits are being enlarged.

At such election the question on the ballot shall be:

'[ ] FOR [ ] AGAINST
Annexation.'

If at the election a majority of the votes cast from the area proposed for annexation shall be 'For Annexation', the annexation ordinance shall become effective as provided by this Part.

(c) The Town of River Bend has jurisdiction under Article 19 of Chapter 160A of the General Statutes over the following described territory:

TRACT ONE

Lying and being situated in Number Eight Township, Craven County, North Carolina and described as follows:

BEGINNING at a point on the southern right-of-way line of U.S. Highway 17, said point being the northwest corner of plan of Piner Estates recorded in Plat Cabinet D, Slide 666, Craven County Registry; thence from said point of beginning along and with westernmost line of said Piner Estates S27 degrees 29'38"W 528.53 feet to the northwesternmost corner of lot No. 1, Craven Woods Subdivision recorded in Plat Cabinet C, Slide 41, Craven County Registry; thence along and with line between aforesaid Piner Estates and Craven Woods Subdivisions N53 degrees 05'15"E 1186.76' to a point; thence continuing with said line N69 degrees 00' E 1106.85 feet to a point, the southeasternmost corner of Lot 1, Piner Estates; thence, S29 degrees 34'19"E to the centerline of secondary road No. 1307, (this point being designated by the letter 'C' on that certain map or plat entitled Trent Estates recorded in Map Book 10, Page 72, Craven County Registry); thence continuing S29 degrees 34'19"E 30.0 feet to a point on the southern right-of-way line of secondary road No. 1307; thence with said southern right-of-way line of secondary road No. 1307 in a westwardly direction to a point on said southern right-of-way line where 'Harris' easternmost line extended southwardly would intersect said right-of-way line; thence, N00 degrees 12'17"W 199.96 feet to a point; thence with said Harris easternmost line

N84 degrees 45'48"W 95.12 feet to a point; thence N3 degrees 11'55"E 147.81' to a point on the southern right-of-way line of U.S. Highway No. 17; thence, with said southern right-of-way line of U.S. Highway No. 17, S67 degrees 00'W 493 feet to a point at the intersection of said southern right-of-way line of U.S. Highway 17 and Canoe Branch; thence in a northerly direction with said Canoe Branch to its intersection with the centerline of Seaboard Coastline Railway, now abandoned; thence with said centerline of Seaboard Coastline Railway in an easterly direction to a point where the western line of Hidden Oaks Subdivision, recorded in Plat Cabinet D, Slide 455, Craven County Registry, extended would intersect said centerline; thence S25 degrees 51'58"E 62.5 feet to the northwestern corner of said Hidden Oaks Subdivision; thence with said northernmost line of Hidden Oaks Subdivision N69 degrees 43'03"E 3, 111.74 feet to the northeast corner of said Hidden Oaks Subdivision S22 degrees 23'E 731.08 feet to a point on the northern right-of-way line of U.S. Highway No. 17; thence continuing S22 degrees 23'E 150.0 feet to a point on the southern right-of-way line of U.S. Highway No. 17; thence with said southern right-of-way line of U.S. Highway No. 17, S67 degrees 48'50"W 727.98 feet to the northeastern corner of aforesaid Piner Estates; thence continuing with said southern right-of-way line S67 degrees 48'50"W 2,271.20 feet to the Point of Beginning.

TRACT TWO

Lying and being situated in Number Eight Township, Craven County, North Carolina and described as follows:

BEGINNING at the southeasternmost corner of Lot No. 18, Plan of Springdale Subdivision recorded in Plat Cabinet D, Slide 623, Craven County Registry; said corner being on the northern right-of-way line of U.S. Highway No. 17; thence along and with the easternmost line of aforesaid Springdale Subdivision N22 degrees 22'03"W 277.0 feet to a point; thence S62 degrees 05'E to the northwestern corner of Lot 79, Plan of Deerfield Subdivision, Phase 3, recorded in Plat Cabinet E, Slide 333, Craven County Registry; thence with northernmost line of aforesaid Deerfield Subdivision, Phase 3, N66 degrees 50'56"E 473.81 feet to a point; thence N50 degrees 07'40"E 281.86 feet to a point on the western right-of-way line of Forest Oaks Drive; thence with western right-of-way line of Forest Oaks Drive S42 degrees 22'20"E 200.19 feet to the northern right-of-way line of Rocky Run Road; thence with said right-of-way of Rocky Run Road S03 degrees 28'20"E 97.78 feet to a point on the northern right-of-way line of U.S. Highway No. 17; thence S66 degrees 50'56"W along and with said northern right-of-way line of U.S. Highway No. 17 to the Point of Beginning."

Section 2. This act becomes effective 30 days after it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1061
Committee Substitute Favorable 5/29/97

Short Title: Disabled Sportsman Licenses. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH LIFETIME SPORTSMAN LICENSES FOR CERTAIN DISABLED RESIDENTS AND DISABLED VETERANS AND TO PROHIBIT THE UNLAWFUL USE OF FACILITIES PROVIDED FOR DISABLED SPORTSMEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-270.1D(b) reads as rewritten:

"(b) Lifetime Sportsman Licenses. Lifetime sportsman licenses are valid for the lifetime of the holders and entitle the holders to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License -- $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License -- $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License -- $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License -- $1,000. this license shall be issued only to an individual nonresident of the State.

(5) Age 70 Resident Lifetime Sportsman License -- $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

(6) Disabled Resident Sportsman License -- $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, 'totally disabled' means physically incapable of being gainfully employed."

Section 2. G.S. 113-270.1C(b)(2) and G.S. 113-270.1C(b) (3) are repealed.

Section 3. G.S. 113-270.1C(b) is amended by adding a new subdivision to read:

"(4) Lifetime Combination Hunting and Fishing License for Disabled Residents -- $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, 'totally disabled' means physically incapable of being gainfully employed."

Section 4. G.S. 143-250.1(c) is amended by adding a new subsection to read:

"(5a) The proceeds from the sale of lifetime combination hunting and fishing licenses for disabled residents pursuant to G.S. 113-270.1C(b)(4);"

Section 5. Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-297. Unlawful use of facilities provided for disabled sportsman.**

Any person who knowingly uses facilities or participates in activities provided by the Wildlife Resources Commission for disabled sportsmen, when that person does not meet the qualifications for use of those facilities or participation in those activities, is guilty of a Class 3 misdemeanor."

Section 6. Section 5 of this act becomes effective December 1, 1997. The remainder of this act becomes effective July 1, 1997. All lifetime combination hunting and fishing licenses issued under G.S. 113-270.1C(b)(2) and G.S. 113-270.1C(b)(3) prior to that date shall remain valid for the uses for which they were issued.

EXPLANATION OF HOUSE BILL 1061:
Disabled Sportsman Licenses – 2nd Edition

TO: Senate Finance Committee
FROM: Robin S. Johnson, Staff Attorney
DATE: June 30, 1997
SPONSOR: Representative McCombs

House Bill 1061 adds the following two lifetime sportsman licenses to those that are currently issued by the Wildlife Resources Commission:

1. A lifetime resident sportsman license for any resident of the State who is a 50% or more disabled veteran, as determined by the United States Department of Veterans Affairs, for a $100 fee.
2. A lifetime resident sportsman license for any totally disabled State resident who is physically incapable of being gainfully employed, for a $100 fee.

Lifetime sportsman licenses entitle the holders to capture, kill, pursue, hunt, fish, or otherwise take into possession any wild animal, bird other than waterfowl, or fish in all open seasons, on game lands, and in public mountain trout waters. As used for these licenses, a State resident is an individual who has resided in the State for the preceding six months or who has been domiciled here for the preceding 60 days. Currently, disabled residents can obtain an "adult resident lifetime sportsman license", for a $500 fee. Revenue from lifetime sportsman licenses are deposited into the Wildlife Endowment Fund.

House Bill 1061 also combines and increases the fee for new lifetime combination hunting and fishing licenses for 50% or more disabled resident veterans as determined by the United States Department of Veterans Affairs and for totally disabled residents from $7.50 to $10, with the proceeds going to the Wildlife Endowment Fund. These licenses entitle the holders to hunt and fish in all open seasons, except on game lands or in public mountain trout waters.

The principal and income of the Wildlife Endowment Fund, also known as the "Eddie Bridges Fund", are used for the purpose of supporting wildlife conservation programs of the State. The Fund is subject to the oversight of the State Auditor.

Section 5 of the bill makes knowing, improper use of facilities and activities provided by the Wildlife Resources Commission for disabled sportsmen a Class 3 misdemeanor (1-10 days community penalty, fine of up to $200, if no prior record). The Wildlife Resources Commission administers a Disabled Sportsman Program that consists of special hunting and fishing activities adapted to the needs of permanently disabled individuals. Each disabled individual may be accompanied by a non-disabled companion. The activities include special seasons, the use of vehicles in areas normally closed to vehicles, and exceptions to the manner for taking wildlife.

Section 5 takes effect December 1, 1997, and the rest of the bill is effective July 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1061 (First Edition)

SHORT TITLE: Disabled Sportsman Licenses

SPONSOR(S): Rep. McCombs

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Wildlife Endowment Fund					
Disabled Sportsman Licenses	NA	NA	NA	NA	NA
Disabled Hunting & Fishing Lic.	$18,500	$18,500	$18,500	$18,500	$18,500
Wildlife Resources Fund	($13,875)	($13,875)	($13,875)	($13,875)	($13,875)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wildlife Resources Commission

EFFECTIVE DATE: Section 5 of the bill becomes effective December 1, 1997. The remainder of the act is effective July 1, 1997.

BILL SUMMARY: This act creates a new Disabled Resident Sportsman License that entitles the license holder to lifetime hunting and fishing privileges including big game, game lands, waterfowl, and mountain trout. The new license sells for $100 and the revenue earned from the license will be deposited into the Wildlife Endowment Fund. The act converts the Disabled Veteran Lifetime Combination Hunting and Fishing License and the Totally Disabled Resident Lifetime Combination Hunting and Fishing License into a Lifetime Combination Hunting and Fishing License for Disabled Residents. The fee for this license is increased from the current $7.50 to $10 and deposits the funds into the Wildlife Endowment Fund. The eligibility criteria for the new license is the same as the old licenses. The bill also adds a Class 3 misdemeanor to the statutes for persons who unlawfully use facilities provided to disabled sportsman by the Wildlife Resources Commission.

ASSUMPTIONS AND METHODOLOGY:
The Wildlife Resources Commission reported that 1,850 disabled person lifetime hunting and fishing licenses were sold at a price of $7.50 in FY 1995-96. This included 195 Disabled Veterans and 1,655 Disabled Residents licenses. Beginning in FY 1997-98, disabled veterans and residents will pay $10 for the same lifetime hunting and fishing license. The only differences are the 1) price, 2) the name - Lifetime Combination Hunting and Fishing License for Disabled Residents, and 3) the fund - revenues will be deposited into the Wildlife Endowment Fund. Assuming the same number of lifetime license applicants each year, the price increase will raise $4,625 more revenue annually. Since the license proceeds are being transferred from the Wildlife Resources Fund to the Wildlife Endowment Fund, there will be loss of revenue in the agency's operating fund.

The bill also creates a new Disabled Resident Sportsman License for $100. This license has the same eligibility criteria as the disabled hunting and fishing license, but offers access to waterfowl, trout, big game, and game lands. The agency believes that one half of the new disabled applicants applying for hunting and fishing licenses will opt for the new sportsman license. The agency also believes that one fourth of the current holders of disabled lifetime hunting and fishing licenses will also buy the new sportsman license. After discussions with state officials at Division of Vocational Rehabilitation Services, the Governor's Advocacy Council for Persons with Disabilities, and the Division of Veteran Affairs, this memo assumes that the agency's assumptions are unfounded. Those persons knowledgeable about the disabled population believe most would choose the inexpensive license to hunt and fish over the more expensive sportsman license. The offer of big game, trout and waterfowl in the sportsman license is not attractive to a group limited by health and mobility concerns. This memo assumes that the disabled will buy the $10 hunting and fishing license and not the $100 sportsman license. For the few that may buy the sportsman license, no revenue is projected.

As for the misdemeanor in the bill, the Administrative Office of the Courts (AOC) does not anticipate that it would have a substantial impact on the Judicial Department as there would not be any significant changes in how cases are processed or disposed. The AOC believes that the very few additional cases which may result from this bill could be absorbed within existing resources. Likewise, the bill would not have a significant fiscal impact on the Department of Correction.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington**TomC**
DATE: April 28, 1997

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1061

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

H1061-ARH-001

Date 7-1, 1997

Comm. Sub. [ ]
Amends Title [ ]
Second Edition

Senator

moves to amend the bill on page 2, line 41,
by deleting "July 1, 1997" and by substituting "October 1, 1997".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1061
Committee Substitute Favorable 5/29/97
Proposed Senate Committee Substitute H1061-PCS1421

Short Title: Disabled Sportsman Licenses. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH LIFETIME SPORTSMAN LICENSES FOR CERTAIN DISABLED RESIDENTS AND DISABLED VETERANS AND TO PROHIBIT THE UNLAWFUL USE OF FACILITIES PROVIDED FOR DISABLED SPORTSMEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-270.1D(b) reads as rewritten:

"(b) Lifetime Sportsman Licenses. Lifetime sportsman licenses are valid for the lifetime of the holders and entitle the holders to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License -- $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License -- $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License -- $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License -- $1,000. this license shall be issued only to an individual nonresident of the State.

(5) Age 70 Resident Lifetime Sportsman License -- $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

(6) Disabled Resident Sportsman License -- $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, 'totally disabled' means physically incapable of being gainfully employed."

Section 2. G.S. 113-270.1C(b)(2) and G.S. 113-270.1C(b) (3) are repealed.

Section 3. G.S. 113-270.1C(b) is amended by adding a new subdivision to read:

"(4) Lifetime Combination Hunting and Fishing License for Disabled Residents -- $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, 'totally disabled' means physically incapable of being gainfully employed."

Section 4. G.S. 143-250.1(c) is amended by adding a new subdivision to read:

"(5a) The proceeds from the sale of lifetime combination hunting and fishing licenses for disabled residents pursuant to G.S. 113-270.1C(b)(4);"

Section 5. Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-297. Unlawful use of facilities provided for disabled sportsman.**

Any person who knowingly uses facilities or participates in activities provided by the Wildlife Resources Commission for disabled sportsmen, when that person does not meet the qualifications for use of those facilities or participation in those activities, is guilty of a Class 3 misdemeanor."

Section 6. Section 5 of this act becomes effective December 1, 1997. The remainder of this act becomes effective October 1, 1997. All lifetime combination hunting and fishing licenses issued under G.S. 113-270.1C(b)(2) and G.S. 113-270.1C(b)(3) prior to that date shall remain valid for the uses for which they were issued.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 360
Judiciary Committee Substitute Adopted 6/12/97

Short Title: Boat Number Fees. (Public)

Sponsors:

Referred to: Finance.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE PAID TO AGENTS OF THE WILDLIFE RESOURCES COMMISSION TO AWARD CERTIFICATES OF BOAT NUMBER OR OTHER VESSEL TRANSACTION AND TO AMEND THE DUTIES OF THE WILDLIFE RESOURCES COMMISSION WITH REGARD TO THE APPOINTMENT OF AGENTS FOR THE ISSUANCE OF BOAT NUMBERS, TO RAISE THE REPORTING REQUIREMENT FOR BOATING ACCIDENTS TO DAMAGES IN EXCESS OF FIVE HUNDRED DOLLARS, AND TO REPEAL THE LAW REQUIRING PERMITS FROM THE WILDLIFE RESOURCES COMMISSION TO HOLD REGATTAS AND OTHER EVENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-5(e) reads as rewritten:

"(e) The Wildlife Resources Commission may ~~award~~ issue any ~~certificate of number~~ vessel transaction pursuant to the provisions of Article 1 or 4 of this Chapter directly or may authorize any person qualified as prescribed in subsection (l) of this section to act as agent for the ~~awarding thereof.~~ issuance of vessel transactions subject to the requirements set forth in this Chapter. ~~In the event that a person accepts such authorization, he may be assigned a block of numbers and certificates therefor which upon award,~~ Upon acceptance of this authorization, an agent's actions in issuing any vessel transaction pursuant to this Chapter ~~in conformity with this Chapter and with any rules and regulations of the Commission,~~ shall be valid as if ~~awarded~~ issued directly by the Commission. As compensation for ~~his services any such agent shall be allowed to retain for his own use fifty cents (50¢).~~ services rendered to the

Commission and to the general public, the agent shall receive the following specified commission from the statutory fee for each listed transaction:

(1) Renewal of vessel registration - $1.25.
(2) Transfer of ownership and registration of a vessel - $3.00.
(3) Issuance of new certificate of vessel number and registration - $3.00.
(4) Issuance of duplicate vessel registration - $0.50.
(5) Issuance, transfer, duplication, or lien recordation of vessel title - $3.00.

It is a Class 1 misdemeanor for any such agent to charge or accept any additional fee, remuneration, or other thing of value for such services."

Section 2. G.S. 75A-5(l) reads as rewritten:

"(l) When certificates of number are to be issued by agents as provided by subsection (e) of this section, the Wildlife Resources Commission ~~is authorized by regulation to establish the qualifications of such agents, including, but not limited to, their financial responsibility, the locations and types of business operated by them and their facilities for safekeeping of unused certificates of number, validation decals, and the monetary proceeds of certificates which have been issued; to prescribe the duties of such agents, including, but not limited to, the methods of issuing certificates of number and validation decals, the evidence of ownership of vessels to be numbered by applicants for number, the times and methods of making periodic and final reports of certificates and decals issued and remaining unissued and remittances of public moneys and unissued certificates and decals; to establish methods and procedures of ensuring accountability of such agents for the proceeds of certificates and decals issued and for certificates and decals remaining unissued; to require individual or blanket bonds of such agents in amounts sufficient to protect the State against loss of public moneys and unissued certificates and decals, the premiums for such bonds to be paid by the agents; to permit such agents to issue both original certificates of number and validation decals and renewals thereof or to limit such agents, or any of them, to the issuance of the originals only; to authorize some or all of such agents to issue temporary certificates of number for use during a limited time pending delivery of regular certificates of number and validation decals; to establish methods and procedures, including submission of the amounts and kinds of evidence which the Commission may deem sufficient, whereby any such agent may be relieved of accountability for the value of unissued certificates and validation decals, or of the monetary proceeds of those which have been issued, which have been lost or destroyed as the result of any occurrence which is beyond the control of such agent; and to prescribe such other reasonable requirements and conditions as the Commission may, in its discretion, deem necessary or desirable to expedite and control the issuance of certificates of number by such agents.~~ may establish administrative guidelines that prescribe:

(1) The qualifications of agents;
(2) The duties of agents;

(3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number;
(4) Requirements for security bonds in amounts sufficient to protect the State against loss of public funds or documents;
(5) Methods and procedures, including submission of the kinds and amounts of evidence deemed sufficient to relieve an agent of responsibility for losses due to occurrences beyond the agent's control; and
(6) Any other reasonable requirement or condition deemed necessary and desirable to expedite and control the issuance of certificates of boat number by agents.

In accordance with ~~such regulations,~~ administrative guidelines developed pursuant to this section, the executive director ~~is authorized to prepare and distribute all forms necessary or convenient for application for and the appointment and bonding of such agents and for receipts, reports and remittances by such agents; to select and appoint such agents in areas most convenient to the boating public and to limit the number of such agents in any locality; to require prompt and accurate reporting and remission of public moneys and unissued certificates and decals by such agents, and to require periodic or special audits of their accounts; to revoke or terminate any such agency for failure to make timely reports and remittances or to comply with any administrative directive or regulation of the Commission, or when he has reason to believe that State money or property is in jeopardy; and to require immediate surrender of all agency accounts, forms, certificates, decals and State moneys in the event of such revocation or termination of any such agency.~~ may:

(1) Select and appoint agents in the areas most convenient to the boating public and limit the number of agents in any one area if necessary for efficiency of operation;
(2) Require prompt and accurate reporting and remittance of public funds or documents by agents;
(3) Conduct periodic and special audits of accounts;
(4) Terminate the authorization of any agent found to be in noncompliance with administrative guidelines or directives of the Commission or when State funds or property are reasonably believed to be in jeopardy; and
(5) Demand the immediate surrender of all accounts, forms, certificates, decals, records, and State funds in the event of the termination of an agency.

A person who is denied the authority to act as an agent for the issuance of certificates of number and validation decals or whose authority to do so is revoked may not commence a contested case under G.S. 150B-23. ~~Any violation of the regulations authorized by this subsection shall be a Class 1 misdemeanor.~~ If any check or draft of any agent for the issuance of certificates of boat number shall be returned by the banking facility upon which the same is drawn for lack of funds, such agent shall be liable to the Wildlife Resources Commission for a penalty of five

percent (5%) of the amount of such check or draft, but in no event shall such penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). Agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale."

Section 3. G.S. 75A-11(b) reads as rewritten:

"(b) In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of ~~one~~ five hundred dollars ~~($100.00),~~ ($500.00), shall, within 10 days, file with the Wildlife Resources Commission a full description of the collision, accident, or other casualty, including such information as said agency may, by regulation, require. Such report shall not be admissible as evidence."

Section 4. G.S. 75A-14 is repealed.

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

SENATE BILL 360

		Current Fee	Current Agent Fee	Proposed Agent Fee
Renewal of Vessel Registration				
	1 Year	$8.00	None	$1.25
	3 Years	$20.00	$0.50	$1.25
Transfer of Ownership & Registration of Vessel				
	1 Year	$8.00	None	$3.00
	3 Years	$20.00	None	$3.00
Issuance of New Certificate of Vessel Number & Registration				
	1 Year	$8.00	None	--
	3 Years	$20.00	$0.50	$3.00
Issuance of Duplicate Vessel Registration		$2.00	None	$0.50
Issuance of Title		$20.00	None	$3.00
Transfer of Title		$20.00	None	$3.00
Duplicate Title		$10.00	None	$3.00
Lien Recordation		$10.00	None	$3.00

Note: None indicates no current agent fee allowed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 534

Short Title: Pleasant Garden Incorporated. (Local)

Sponsors: Senator Shaw of Guilford.

Referred to: Rules and Operations of the Senate.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF PLEASANT GARDEN.

The General Assembly of North Carolina enacts:

Section 1. A Charter of the Town of Pleasant Garden is enacted as follows:

"THE CHARTER OF THE TOWN OF PLEASANT GARDEN.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1-1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Pleasant Garden are a body corporate and politic under the name 'Town of Pleasant Garden'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2-1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Pleasant Garden are as follows:

BEGINNING at a point in the southern right-of-way line of Ritters Lake Road (S.R. 3325) at its intersection with the western line of Fentress Township with Sumner Township, and running; thence, along the southern right-of-way line of said Ritters: Lake Road, eastwardly approximately 8440 feet to a point;

thence, along the western line of tax parcel ACL-3-152-540-9, southeastwardly approximately 500 feet to a point;

thence, along the western line of tax parcels ACL-3-152-540-46 and 47, southwardly approximately 1750 feet to a point;
thence, along the southern line of tax parcels ACL-3-152-540-47, 8, and 7, northeastwardly approximately 2140 feet to a point;
thence, along the eastern line of tax parcel ACL-3-152-540-7, northeastwardly approximately 150 feet to a point;
thence, along the southern line of tax parcels ACL-3-152-540-41, 42, and 43, eastwardly approximately 2275 feet to a point;
thence, along the western right-of-way line of Alliance Church Road (N.C. Highway 22), northwardly approximately 500 feet to a point;
thence, crossing said Alliance Church Road, northeastwardly approximately 200 feet to a point in the northern right-of-way line of a proposed new road connecting Alliance Church Road with U. S. Highway 421;
thence, along the northern right-of-way line of said connector road, northeastwardly approximately 1350 feet to a point;
thence, along the southwestern right-of-way line of U. S. Highway 421, southeastwardly approximately 14,400 feet to a point in the centerline of Hagan-Stone Park Road (S.R. 3411);
thence, along the centerline of Hagan-Stone Park Road (S.R. 3411), southwardly approximately 2,500 feet to a point;
thence, along the southern line of tax parcel ACL-9-579-411-39, westwardly approximately 350 feet to a point;
thence, along a line of the Pleasant Garden Fire District and across tax parcel ACL-9-579-411-19, southwardly approximately 175 feet to a point in the northern line of tax parcel ACL-9-579-411-43;
thence, along the northern line of said tax parcel ACL-9-579-411-43, eastwardly approximately 300 feet to a point in the centerline of Hagan-Stone Park Road (S.R. 3411);
thence, along the centerline of said Hagan-Stone Park Road (S.R. 3411), southwestwardly and westwardly approximately 3,600 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-422-32, southwardly approximately 1,750 feet to a point;
thence, along the southern line of said tax parcel ACL-9-579-422-32, westwardly approximately 1,900 feet to a point;
thence, along a western line of said tax parcel ACL-9-579-422-32, northwardly approximately 230 feet to a point;
thence, along a northern line of said tax parcel ACL-9-579-422-32 with Hagan-Stone Park, eastwardly approximately 600 feet to a point;
thence, along a western line of said tax parcel ACL-9-579-422-32 with Hagan-Stone Park, northwardly approximately 1,200 feet to a point in the centerline of Hagan-Stone Park Road (S.R. 3411);
thence, along the centerline of said Hagan-Stone Park Road (S.R. 3411) northeastwardly approximately 800 feet to a point;

thence, along the western line of tax parcels ACL-9-579-422-35 and 23, with Hagan-Stone Park, northwardly approximately 1,530 feet to a point in the southern line of tax parcel ACL-9-579-422-12;
thence, along the southern line of said tax parcel ACL-9-579-422-12 with Hagan-Stone Park, westwardly approximately 480 feet to a point;
thence, along the western line of said tax parcel ACL-9-579-422-12 with Hagan-Stone Park, northwardly approximately 1,350 feet to a point in the centerline of Tabernacle Church Road (S.R. 3412);
thence, along the centerline of said Tabernacle Church Road (S.R. 3412) westwardly approximately 150 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-422-11 with Hagan-Stone Park southwardly approximately 1,300 feet to a point;
thence, along the southern line of tax parcels ACL-9-579-422-11 and 7 and ACL-9-579-477-11, 15, 33, 35, and 26, with Hagan-Stone Park, westwardly approximately 2,100 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-477-25 with Hagan-Stone Park southwardly approximately 280 feet to a point;
thence, along the southern line of tax parcels ACL-9-579-477-25, 24, and 41 with Hagan-Stone Park southwestwardly approximately 1,370 feet to a point;
thence, along the western line of tax parcel ACL-9-579-477-41 with Hagan-Stone Park, northeastwardly approximately a 700 feet to a point, the southeast corner of tax parcel ACL-9-579-477-40;
thence, along the southern line of tax parcels ACL-9-579-477-40 and 43 with Hagan-Stone Park, westwardly approximately 1,350 feet to a point;
thence, along the eastern line of tax parcels ACL-9-579-477-43, ACL-3-156-482-2 and 5, ACL-3-156-487-1 and 6 and ACL-9-579-478-8, southwardly approximately 3,800 feet to a point in the centerline of Hagan-Stone Park Road (S.R. 3411);
thence, along the centerline of said Hagan-Stone Park Road (S.R. 3411) eastwardly approximately 2,800 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-478-3 with Hagan-Stone Park, southwardly approximately 125 feet to a point;
thence, along the northern line of tax parcel ACL-9-579-478-3 with Hagan-Stone Park, eastwardly approximately 1,200 feet to a point;
thence, along the eastern side of tax parcel ACL-9-579-478-3 the following 5 courses:
(1) Southwardly approximately 500 feet to a point
(2) Eastwardly approximately 100 feet to a point
(3) Southwardly approximately 975 feet to a point
(4) Westwardly approximately 190 feet to a point
(5) Southwardly approximately 1,300 feet to a point in the centerline of Fieldview Road (S.R. 3407);
thence, along the centerline of said Fieldview Road (S.R. 3407) southeastwardly and eastwardly approximately 1,700 feet to a point;
thence, along the eastern line of tax parcel ACL-9-577-420-19, southwardly approximately 620 feet to a point;

thence, along the southern line of tax parcel ACL-9-577-420-19, westwardly approximately 300 feet to a point;
thence, along the eastern line of tax parcel ACL-9-577-420-21, southwardly approximately 400 feet to a point;
thence, along the southern line of tax parcels ACL-9-577--420-21, 22, and 23, north westwardly approximately 800 feet to a point;
thence, along the southern line of tax parcels ACL-9-577-420-9 and 26, southwestwardly approximately 1450 feet to a point in the eastern line of tax parcel ACL-9-579-479N-4; thence, along the eastern side of tax parcel ACL-9-579-479N-4, the following 3 courses:
(1) Southwardly approximately 200 feet to a point
(2) Eastwardly approximately 50 feet to a point
(3) Southwardly approximately 1,350 feet to a point, the southeast corner of said tax parcel ACL-9-579-479N-4;
thence, along the southern line of tax parcel ACL-9-579-479N-4, westwardly approximately 1,800 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-479S-15, southwestwardly approximately 280 feet to a point;
thence, along the eastern line of tax parcel ACL-3-158-479S-4, southwardly approximately 200 feet to a point;
thence, along the southern line of said tax parcel ACL-3-158-479S-4, southwestwardly approximately 380 feet to a point in the centerline of N.C. Highway 22;
thence, along the centerline of said N.C. Highway 22, southeastwardly approximately 600 feet to a point;
thence, along the southern line of tax parcels ACL-3-158-479S-3, 13, 12, and 17, ACL-3-158-485-11, ACL-3-158-486S-15, 13, and 12, southwestwardly approximately 3,000 feet to a point, the northeastern corner of tax parcel ACL-3-158-485-6;
thence, along the eastern line of said tax parcel ACL-3-158-485-6, southwardly approximately 1,900 feet to a point;
thence, along the southern line of tax parcels ACL-3-158-485-6 and 9, westwardly approximately 1,430 feet to a point in the centerline of Kearney Road (S.R. 3404);
thence, along the centerline of said Kearney Road (S.R. 3404), northwardly approximately 300 feet to a point;
thence, along the southern line of tax parcels ACL-3-158-485-6 and ACL-3-158-546-2, westwardly approximately 2,200 feet to a point;
thence, along a western line of tax parcel ACL-3-158-546-2, northwardly approximately 960 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-546-2, westwardly approximately 1,300 feet to a point;
thence, along the eastern line of tax parcels ACL-3-158-546-12, 13, 14, 21, 15, 16, 17, 18, 19, and 20, southwardly approximately 1,600 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-546-20, westwardly approximately 300 feet to a point in the centerline of Hunt Road (S.R. 3402);

thence, along the centerline of said Hunt Road (S.R. 3402), southward approximately 650 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-546-3, westwardly approximately 1,000 feet to a point;
thence, along the southern line of tax parcel ACL-3-158-546-7, North westwardly approximately 630 feet to a point;
thence, along the western line of tax parcels ACL-3-158-546-7, and 30, northeastwardly approximately 1,020 feet to a point;
thence, along the southern line of tax parcel ACL-91-6784-551-25 and the southern line of Pleasant Grove Subdivision which is designated at B-Sub of block 551, tax map ACL-91-6784, westwardly approximately 650 feet to a point, the northeast corner of tax parcel ACL-91-6784-551-12;
thence, along the eastern line of said tax parcel ACL-91-6784-551-12, southwardly approximately 500 feet to a point;
thence, along the southern line of said tax parcel ACL-91-6784-551-12, westwardly approximately 520 feet to a point, the northeast corner of Center Subdivision;
thence, along eastern lines of said Center Subdivision, which is designated as A-Sub of block 551,tax map ACL-91-6784, the following 5 courses;
(1) Southwestwardly approximately 500 feet to a point;
(2) Southeastwardly approximately 200 feet to a point;
(3) Southwestwardly approximately 600 feet to a point;
(4) North westwardly approximately 200 feet to a point;
(5) Southwestwardly approximately 300 feet to a point;
thence, along the southern line of said Center Subdivision, westwardly approximately 460 feet to a point in the centerline of Branson Mill Road (S.R. 3437);
thence, along the centerline of said Branson Mill Road (S.R. 3437), northeastwardly approximately 100 feet to a point;
thence, along the southern line of tax parcel ACL-91-6784-550N-22, westwardly approximately, 550 feet to a point in the eastern line of tax parcel ACL-91-6784-550N-1;
thence, along the eastern line of said tax parcel ACL-91-6784-550N-1, southwardly approximately 75 feet to a point;
thence, along the southern line of tax parcels ACL-91-6794-550N-1 and 15, westwardly approximately 350 feet to a point;
thence, along the eastern line of tax parcel ACL-91-6784-550N-14, southwardly approximately 700 feet to a point;
thence, along the southern line of said tax parcel ACL-91-6784-550N-14, westwardly approximately 950 feet to a point;
thence, along the western line of tax parcels ACL-91-6784-550N-14, 11, and 21 and ACL-91-6784-551-2 and crossing Hodgin Valley Road (S.R. 3440), northwardly approximately 2,000 feet to a point;
thence, along the northern line of tax parcels ACL-91-6784-551-2, 17, 5, and 14 and the northern line of Center Subdivision, which is designated as A-Sub of block 551,

ACL-91-6784, westwardly approximately 2,170 feet to a point in the centerline of Branson Mill Road (S.R. 3437);
thence, along the centerline of said Branson Mill Road (S.R. 3437), northeastwardly approximately 1,100 feet to a point;
thence, along the southern line of tax parcel ACL-91-6784-551-18, northwestwardly approximately 400 feet to a point;
thence, along the western line of tax parcels ACL-91-6784-551-18 and 8, northwestwardly approximately 1,300 feet to a point;
thence, along the southern line of tax parcels ACL-91-6784-551-8, 24, and 22, westward approximately 950 feet to a point;
thence, along the western line of tax parcels ACL-91-6784-551-22 and 23, northwestwardly approximately 1,050 feet to a point;
thence, along the northern line of tax parcel ACL-91-6784-551-23, northeastwardly approximately 350 feet to a point, the southwest corner of tax parcel ACL-91-6784-552S-6;
thence, along the western line of said tax parcel ACL-91-6784-552S-6, northwardly approximately 750 feet to a point;
thence, along the southern line of tax parcels ACL-91-6784-552S-6 and 5, southwestwardly approximately 1,800 feet to a point in the eastern line of tax parcel ACL-91-6784-611S-3;
thence, along the southeastern line of said tax parcel ACL-91-6784-611S-3 as it meanders southwestwardly approximately 840 feet to a point;
thence, along the southern line of said tax parcel ACL-91-6784-611S-3, southwestwardly approximately 620 feet to a point;
thence, along the southwestern line of said tax parcel ACL-91-6784-611S-3, as it meanders northwestwardly approximately 875 feet to a point in the centerline of Robolo Road (S.R. 3439);
thence, along the centerline of said Robolo Road (S.R. 3439) southwestwardly;
approximately 900 feet to its intersection with the western line of Davis Mill Road;
thence, along the western line of Davis Mill Road, northwardly approximately 7820 feet to a point in the northern line of tax parcel ACL-9-635-609-19;
thence, along the northern line of tax parcel ACL-9-635-609-19, southeastwardly approximately 470 feet to a point in the westernline of Davis Mill Road (S.R. 3433);
thence, along the westernline of said Davis Mill Road (S.R. 3433), northeastwardly approximately 3,050 feet to a point;
thence, along the southern line of Nocho Park Subdivision which is designated as B-Sub of block 609, ACL-9-635, westwardly approximately 1,350 feet to a point;
thence, along the western line of said Nocho Park Subdivision, northwardly approximately 1,350 feet to a point in the centerline of Sheraton Park (S.R. 3426);
thence, along the centerline of said Sheraton Park Road (S.R. 3426) westwardly approximately 1440 feet to its intersection with the western line of Fentress Township with Sumner Township;
thence, along the western line of Fentress Township with Sumner Township, northwardly approximately 8180 feet to the point of BEGINNING.

"Sec. 2-2. **Annexation of Property.** (a) The right to annex properties into the boundaries of the Town of Pleasant Garden in accordance with Article 4A of Chapter 160A of the General Statutes shall only apply to properties located south of the Town's corporate limits and confined within the following boundaries: bounded on the east by U.S. 421, running southwardly to Company Mill Road; thence along Company Mill Road to Monnett Road; thence along Monnett Road to N.C. 22; thence along N.C. 22 to the Guilford County line; and bounded on the west by the Fentress Township line beginning at Ritters Lake Road and running southwardly to the west right-of-way line of Davis Mill Road; thence Davis Mill Road to the Guilford County line.

Annexation of property into the boundaries of the Town of Pleasant Garden shall come at the request of the owners of real property according to G.S. 160A-31 or G.S. 160A-58.1. No property shall be annexed by the Town of Pleasant Garden involuntarily under Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes.

(b) In the event the boundaries are to be modified, changed, altered, reduced or extended through future action of the General Assembly by request of the Town Council, the Town Clerk or other person designated by the Town Council shall notify the Mayor and City Council of the City of Greensboro, in writing, prior to the convening of the next ensuing session of the General Assembly in which a change in the boundaries is to be considered and shall first seek the support of the City of Greensboro.

(c) G.S. 160A-58.1(b)(2) shall not apply to the City of Greensboro as it relates to the Town of Pleasant Garden.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3-1. **Structure of the Governing Body; Number of Members.** The governing body of the Town of Pleasant Garden is the Town Council which has five members.

"Sec. 3-2. **Manner of Electing Council.** The qualified voters of the entire Town nominate and elect the council.

"Sec. 3-3. **Term of Office of Council Members.** Members of the Council are elected to four-year terms. In 1999, five members shall be elected to the Council. The three members receiving the highest number of votes shall serve four-year terms. The two receiving the next highest number of votes shall serve two-year terms. In 2001, and quadrennially thereafter, two members shall be elected to the Council. In 2003, and quadrennially thereafter, three members shall be elected to the Council.

"Sec. 3-4. **Mayor; Term of Office.** The Mayor shall be selected by the Council from among its membership to serve at its pleasure.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4-1. **Method.** Council members shall be elected on a nonpartisan primary basis and the results determined in accordance with G.S. 163-294.

"Sec. 4-2. **Results.** Election results shall be determined by the Guilford County Board of Elections according to Chapter 163 of the General Statutes.

"CHAPTER V.
"ADMINISTRATION.

"Sec. 5-1. **Mayor-Council Plan.** The Town of Pleasant Garden shall operate under the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 5-2. **Interim Council.** Notwithstanding Section 3-1 of this Charter, from the effective date of this Charter until the organizational meeting of the Town Council after the 1999 municipal election, the members of the Council shall be: Larry Still, Mary Ann McNabb, Bill Wright, Jim Ayres, Betsy Lowder, Amy Parsons, Terry Lee, Ken Lentz, Gene Kimel, Scott Nowlan, and Cynthia Spencer.

"Sec. 5-3. **Taxation and Funds.** (a) The Town of Pleasant Garden is eligible to receive distributions of State funds during the fiscal year 1997-98.

(b) Notwithstanding G.S. 160A-209(d), except with the approval of the qualified voters of the Town in a referendum under G.S. 160A-209, the Town may not levy ad valorem taxes in excess of twenty cents (20¢) on the one hundred dollar ($100.00) valuation. This subsection does not limit taxation to pay the debt service on general obligation indebtedness incurred by the Town in accordance with law."

Section 2. (a) From and after the effective date of this act, the citizens and property in the Town of Pleasant Garden shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain from Guilford County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1997; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) If the effective date of this act is before July 1, 1997, the Town may adopt a budget ordinance for fiscal year 1996-97 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. The Town may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1997.

Section 3. (a) The Guilford County Board of Elections shall conduct an election on a date set by the Guilford County Board of Elections for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Pleasant Garden, the question of whether or not such area shall be incorporated as the Town of Pleasant Garden. The date of the election shall be not more than 90 days after the date of approval of this act under section 5 of the Voting Rights Act of 1965. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Town of Pleasant Garden".

Section 4. In the election, if a majority of the votes are cast "FOR incorporation of the Town of Pleasant Garden", Sections 1 and 2 of this act become effective on the date of the certification of the results of the election. Otherwise, Sections 1 and 2 of this act have no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 299
Committee Substitute Favorable 4/2/97
Committee Substitute #2 Favorable 4/21/97

Short Title: Vietnam Veterans Plates. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO DEVELOP SPECIAL MOTOR VEHICLE REGISTRATION PLATES FOR VIETNAM VETERANS AND TO PROVIDE THAT THE TEN-DOLLAR ADDITIONAL FEE CHARGED FOR THE PLATE WILL BE USED TO SUPPORT THE NORTH CAROLINA VETERANS HOME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(28a) Vietnam Veteran. -- Issuable to a veteran of the armed forces of the United States who served in Vietnam. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Section 2. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), ~~and~~ the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the North Carolina Veterans Home Trust Fund (VHTF), which is established under G.S. 165-48, as follows:

Special Plate	SRPA	CCAPA	NHTF	VHTF
Historical Attraction	$10	$20	0	
In-State Collegiate Insignia	$10	$15	0	
Out-of-state Collegiate Insignia	$10	0	$15	
Personalized	$10	0	$10	
Special Olympics	$10	$15	0	
Olympic Games	$10	$15	0	
State Attraction	$10	$20	0	
Vietnam Veteran	0	0	0	$10
Wildlife Resources	$10	$10	0	
All other Special Plates	$10	0	~~0.~~ 0	0."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 299
Committee Substitute Favorable 4/2/97
Committee Substitute #2 Favorable 4/21/97
PROPOSED SENATE COMMITTEE SUBSTITUTE
H299-CSRB-6/27

Short Title: Vietnam Veterans Plates. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO DEVELOP SPECIAL MOTOR VEHICLE REGISTRATION PLATES FOR VIETNAM VETERANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(28a) Vietnam Veteran. -- Issuable to a veteran of the armed forces of the United States who served in Vietnam. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

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

EXPLANATION OF HOUSE BILL 299:
Vietnam Veterans Plates (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 27, 1997
SPONSOR: Representative Sexton

House Bill 299 would authorize the Division of Motor Vehicles to develop a special registration plate issuable to a veteran of the armed forces of the United States who served in Vietnam. The Division would have to receive at least 300 applications of the plate before it could be issued .

Under the original bill, the $10 additional fee charged for this special plate would be credited to the North Carolina Veterans Home Trust Fund. This would be the only special license plate for which the $10 additional fee would be diverted from the Special Registration Plate Fund. The **proposed committee substitute** conforms the fee schedule for this special license plate with the current fee schedule for all other special license plates by crediting the additional $10.00 fee to the Special Registration Plate Account. After deducting the cost of the plates from this account, the money is distributed quarterly as follows:

Percentage	Purpose
33%	Department of Commerce for advertising travel and tourism and industrial development
50%	Department of Transportation for beautification of highways
17%	Department of Human Resources to promote Travel accessibility for disabled persons

In 1991, the General Assembly created a study committee to address the many varied statutes concerning special license plates. At that time, there were six different categories of special license plates with four different fee dispositions, and a complicated web of various fee accounts. Based upon an audit performed by the State Auditor's office, the Committee recommended, and the General Assembly enacted, a uniform fee schedule that consolidated the special license plates into one statute and provided that the $10 additional fee from all special registration plates be credited to the special registration plate account. Since 1991, the General Assembly has enacted at least 14 new special registration plates. In all instances, the first $10 of any additional fee has been credited to the Special Registration Plate Account.

There are some special license plates that earn money for a particular cause. In those instances, the additional fee a person must pay to obtain the special registration plate is greater than $10. The amount of the additional fee that exceeds $10 is credited to an account to be distributed quarterly to the appropriate entity. The additional fees for plates that raise money for a particular cause range from $20 to $30.

The original bill would have attributed the initial $10 additional fee to the North Carolina Veterans Home Trust Fund. The General Assembly created the North Carolina Veterans Home Trust Fund in 1995 when it funded the first State run veterans home. The home is expected to be completed during the 1997-98 fiscal year. The Governor's continuation budget requested a $300,000 appropriation for the 1997-98 fiscal year and a $200,000 appropriation for the 1998-99 fiscal year for operating expenses of the home. The Trust Fund is an interest-bearing, nonreverting fund. The balance in the Fund at this time is approximately $15,361.

The Fund consists of appropriations, grants, and fees charged the residents who are admitted to a State veterans home. The money in the Fund may be used by the Division of Veterans Affairs to build or remodel buildings to be used as homes for aged and infirm veterans living in North Carolina and to pay the expenses of the homes. It is the hoped that the homes will be self-funding through fees charged their residents and federal aid and assistance.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 299
Committee Substitute Favorable 4/2/97
Committee Substitute #2 Favorable 4/21/97
Proposed Senate Committee Substitute H299-PCSX1420

Short Title: Vietnam Veterans Plates. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO DEVELOP SPECIAL MOTOR VEHICLE REGISTRATION PLATES FOR VIETNAM VETERANS AND TO PROVIDE ADDITIONAL REVENUE FOR THE SUPPORT OF THE NORTH CAROLINA VETERANS HOME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(28a) Vietnam Veteran. -- Issuable to a veteran of the armed forces of the United States who served in Vietnam. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00

Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
Vietnam Veteran	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
All Other Special Plates	$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), ~~and~~ the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, and the North Carolina Veterans Home Trust Fund (VHTF), which is established under G.S. 165-48, as follows:

Special Plate	SRPA	CCAPA	NHTF	VHTF
Historical Attraction	$10	$20	0	0
In-State Collegiate Insignia	$10	$15	0	0
Out-of-state Collegiate Insignia	$10	0	$15	0
Personalized	$10	0	$10	0
Special Olympics	$10	$15	0	0
Olympic Games	$10	$15	0	0
State Attraction	$10	$20	0	0
Vietnam Veteran	$10	0	0	$10
Wildlife Resources	$10	$10	0	0
All other Special Plates	$10	0	~~0.~~ 0	0."

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

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 1, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Hamilton	Wildlife
Ralph Clark	City of Roxboro
Jon Holmes	NCPTA / NCCPT
Tommy Harrelson	Enterprise
Michael Rea	
Lyn Glowacki	
Mac Rawlings	N.C. Aggregates
Chuck Collins	REVENUE
Carrie Hartley	Office of Gov
Cam Cover	BPMHL
Mona Moncado	Poyner + Spruill

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 1, 1997

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roger Bone	Bone & Assoc —
Joe Ortega	Sierra Club - CCNC
Rob Schofield	NCJCDC
Susan Schmidt	NCJCDC
C Scott	NC AFL-CIO
JO Stell MD	Medical Mutual Group (Dr. of the Day)
Jeff Nash	North Carolina Railroad Co.

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

AMENDED REPORT

Tuesday, July 01, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS#2) **63** River Bend Zoning/Annexation
Sequential Referral: None
Recommended Referral: None

H.B. **71** Halifax-Roanoke Rapids Airport
Sequential Referral: None
Recommended Referral: None

H.B.(SCS)**681** Roxboro Charter
Sequential Referral: None
Recommended Referral: None

S.B.(CS #1)**360** Boat Number Fees
Sequential Referral: None
Recommended Referral: None

S.B. **534** Pleasant Garden Incorporated
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **832** Newland/Spruce Pine Tax Payment
Draft Number: PCSX7340
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

H.B. **1057** Exempt Audiovisual Masters

Draft Number:	PCSXA400
Sequential Referral:	None
Recommended Referral:	Appropriations
Long Title Amended:	No

TOTAL REPORTED: 7

Committee Clerk Comment: None

Attachment #4

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, July 02, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.(CS#2) **299** Vietnam Veterans Plates

Draft Number:	PCSX1420
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

H.B.(CS)**1061** Disabled Sportsman Licenses

Draft Number:	PCS1421
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: Bills taken up at 7-1-97 Sen. Finance Meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 2, 1997

ON THE FLOOR DURING 11 O'CLOCK SESSION

The Senate Finance Committee met on the floor during the 11 o'clock session with Senator Kerr presiding. All committee members present for session were at the meeting.

H.B. 101 - Extend Tri-County Administration

Senator Kerr called the meeting to order and explained proposed committee substitute for H.B. 101. Senator Lee moved to adopt the PCS and the motion carried. On motion by Senator Perdue, the committee substitute was given a "favorable" report by the committee. Copy of bill, committee substitute and explanation included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 101

Short Title: Stokes School Acquisition. (Local)

Sponsors: Representative Baker.

Referred to: Local & Regional Government II, if favorable, Finance.

February 11, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 101
Proposed Senate Committee Substitute H101-PCS1422

Short Title: Extend Tri-County Admin. (Public)

Sponsors:

Referred to:

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE TIME FOR THE DEPARTMENT OF HUMAN RESOURCES TO ADMINISTER THE SERVICES OF THE TRI-COUNTY AREA AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding S.L. 1997-7, the Department of Human Resources may continue to administer the services of the Tri-County Area Authority in accordance with G.S. 122C-125.1 on behalf and at the request of the board of county commissioners of one or more of the counties that constitute the Tri-County Area Authority. The extension granted under this section shall be for a period not to exceed three calendar months commencing July 1, 1997, and shall be for the sole purpose of allowing one or more of the counties that constitute the Tri-County Area Authority to assess the feasibility of combining with another existing area authority.

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

SUMMARY
PROPOSED COMMITTEE SUBSTITUTE FOR H101

BACKGROUND

House Bill 77 directed the Secretary of Human Resources to dissolve certain area mental health authorities (Tri-County) by June 30, 1997. After HB 77 was ratified the Department requested that a special provision be included in the budget bill authorizing the Department to continue to administer the services of the Tri-County Area Authority for three months beginning on July 1, 1997. A special provision was included in both the Senate and the House budget bills. However, since the budget bill has not yet been enacted, the Department does not have the authority to continue the administration of Tri County Services as of July 1, 1997.

PROPOSED COMMITTEE SUBSTITUTE

The Proposed Senate Committee Substitute for H101 uses the language from the special provision in the Senate budget bill to extend DHR's authority to administer Tri-County services for a period not to exceed three months from July 1, 1997. The extension is granted for the purpose of allowing one or more of the counties that constituted Tri-County Area Authority to assess the feasibility of combining with another existing area authority. The administration must be exercised in accordance with G.S. 122C-125.1 (section that governs takeover of an area mental health authority by DHR) and at the request of the board of county commissioners of one or more of the affected Tri-County counties.

[Note: H101 is a local bill introduced by Rep. Baker. It pertains to Stokes county school acquisition and is no longer needed by Rep. Baker.]

Attachment # 1

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, July 02, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **101** Stokes School Acquisition.

Draft Number:	PCS1422
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: HB 101

SENATE FINANCE COMMITTEE

TUESDAY, JULY 8, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on July 8, 1997, with Senator Kerr presiding. There were 21 members present.

H.B. 993 - Regional Transportation Authorities

Representative Gray was recognized to explain H.B. 993. After discussion, Senator Ballantine moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

H.B. 305 - Peanut Assessment Cap

Representative Brown was recognized to explain this bill. Senator Hoyle moved for the adoption of proposed committee substitute and the motion carried. Senator Albertson explained the changes in the PCS. Glenn Jernigan, representing the peanut growers in North Carolina, spoke in support of the bill. Senator Wellons moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill and committee substitute included in the minutes.

H.B. 1044 - County Tax Information Recipient

Representative Rogers was recognized to explain this bill and Senator Hoyle moved for the adoption of a proposed committee substitute. Motion carried. Cindy Avrette, Staff Attorney, explained the changes in the PCS. On motion by Senator Cochrane, the committee substitute was given a "favorable" report by the committee. Copy of bill, committee substitute and explanation included in the minutes.

H.B. 337 - Randolph Occupancy Tax

This bill had previously been discussed in Senate Finance and the new proposed committee substitute adds an additional county to the bill. On motion by Senator Dannelly, the PCS was adopted and on further motion by Senator Dannelly, the committee substitute was given a "favorable" report. Copies of committee substitutes included in the minutes.

H.B. 457 - Amend Forest Development Act

Representative Weatherly was recognized to explain this bill. On motion by Senator Albertson, a proposed committee substitute was adopted. At the conclusion of Representative Weatherly's explanation, Cindy Avrette, Staff Attorney, gave a further explanation of the changes in this bill. There was a general discussion on this bill with questions from the committee members being answered by the bill sponsor and staff. Bob Slocum, North Carolina Forestry Association, was introduced and spoke in favor of this bill. Michael Thompson, Section Chief with Forest Management, was recognized to answer questions from the committee members. After a very lengthy discussion on this bill, Senator Kerr announced that due to the many questions and concerns of the committee that this bill would not be voted on today but would be further discussed at a later date. Copy of bill, committee substitute, explanation and fiscal note included in the minutes.

H.B. 340 - Kannapolis Property Acquisitions

Senator Hartsell explained this bill for Representative Moore. Senator Cochrane moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

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

H.B. 136 and H.B. 843 were not heard at this committee meeting.

Attachment #1

SENATE FINANCE COMMITTEE
JULY 8, 1997
8:30 A.M. - Room 643

H.B. 136 - Late Video Return/Sales Tax - Rep. Weatherly

H.B. 305 - Peanut Assessment Cap - Rep. Morgan

H.B. 337 - Randolph Occupancy Tax - Rep. Culp

H.B. 340 - Kannapolis Property Acquisitions - Rep. Moore

H.B. 457 - Amend Forest Development Act - Rep. Weatherly

H.B. 843 - Cedar Rock Incorporated - Rep. Starnes

H.B. 993 - Regional Transportation Authorities - Rep. Gray

H.B. 1044 - County Tax Information Recipient - Rep. Rogers

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 993
Committee Substitute Favorable 6/4/97
Committee Substitute #2 Favorable 6/12/97

Short Title: Regional Transportation Authorities. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW CREATION OF ADDITIONAL REGIONAL TRANSPORTATION AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 27.

"Regional Transportation Authority.

"**§ 160A-630. Title.**

This Article shall be known and may be cited as the 'Regional Transportation Authority Act.'

"**§ 160A-631. Definitions.**

As used in this Article, unless the context otherwise requires:

(1) 'Authority' means a Regional Transportation Authority as defined by subdivision (6) of this section.

(2) 'Board of Trustees' means the governing board of the Authority, in which the general legislative powers of the Authority are vested.

(3) 'Population' means the number of persons residing in respective areas as defined and enumerated in the most recent decennial federal census.

(4) 'Public transportation' means transportation of passengers whether or not for hire by any means of conveyance, including, but not

limited to, a street or elevated railway or guideway, subway, motor vehicle or motor bus, carpool or vanpool, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within or working within the territorial jurisdiction of the Authority, excluding charter, tour, or sight-seeing service.

(5) 'Public transportation system' means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking, or other facilities, railroads and railroad rights-of-way whether held in fee simple by quitclaim or easement, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. 'Public transportation system' however, does not include streets, roads, or highways except those for ingress and egress to vehicle parking.

(6) 'Regional Transportation Authority,' means a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(7) 'Unit of local government' means any county, city, town or municipality of this State, and any other political subdivision, public corporation, Authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.

(8) 'Unit of local government's chief administrative official' means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the unit of local government's administrative duties is vested.

"§ 160A-632. Definition of territorial jurisdiction of Authority.

An authority may be created for the area of any Metropolitan Planning Organization of the State that, at the time of creation of the authority, meets the following criteria, such area being the initial territorial jurisdiction of the Authority:

(1) The area consists of all or part of five counties, all five counties of which form a contiguous territory;

(2) At least two of those counties are contiguous to each other and each have a population of 250,000 or over; and

(3) The other three counties each have a population of 100,000 or over.

"§ 160A-633. Creation of Authority.

(a) The city councils of the four largest cities within an area for which an authority may be created as defined in G.S. 160A-632 may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the

date fixed for such hearing, in a newspaper having a general circulation in the county. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the Authority and shall state the time and place of the public hearing to be held thereof. No city shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;

(2) A statement that such authority is organized under this Article; and

(3) The names of the four organizing cities.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the Authority, a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the Authority has been duly organized and its officers elected as herein provided, the secretary of the Authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the Authority.

(e) The Authority may become a Designated Recipient pursuant to the Urban Mass Transportation Act of 1964, as amended.

"§ 160A-634. Territorial jurisdiction and service area of the Authority.

(a) The territorial jurisdiction and service area of the Authority shall be as determined by the Board of Trustees consistent with its purpose, but shall initially consist of those areas included within the Metropolitan Planning Organization boundaries. With the consent by resolution of the affected board of county commissioners, the jurisdiction and area may be expanded to include contiguous areas, but the total jurisdiction and service area shall not exceed part or all of 12 counties.

(b) Except as provided by this Article, the jurisdiction of the Authority may include all local public passenger transportation operating within the territorial jurisdiction of the Authority, but the Authority may not take over the operation of any existing public transportation without the consent of the owner.

(c) The Authority shall not have jurisdiction over public transportation subject to the jurisdiction of and regulated by the United States Department of Transportation, nor shall it have jurisdiction over intrastate public transportation classified as common carriers of passengers by the North Carolina Utilities Commission.

"§ 160A-635. Membership; officers; compensation.

(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of:

(1) The mayor of the four cities within the service area that have the largest population, or a member of the city council designated by the city council to serve in the absence of the mayor.

(2) Two members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.

(3) The chair of each Metropolitan Planning Organization in the territorial jurisdiction.

(4) The chair of the board of commissioners of any county within the territorial jurisdiction or a member of the board of commissioners designated by the board to serve in the absence of the chair, but only if the Board of Trustees by resolution has expanded the Board of Trustees to include the chair of the board of commissioners of that county and the board of commissioners of that county has consented by resolution.

(b) The members appointed by the Secretary of Transportation shall serve at the pleasure of the Secretary.

(c) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(d) Members of the Board of Trustees shall reside within the territorial jurisdiction of the Authority as defined by G.S. 160A-634.

(e) The Board of Trustees shall annually elect from its membership a Chairperson, and a Vice-Chairperson, and shall annually elect a Secretary, and a Treasurer.

(f) Members of the Board of Trustees shall receive the sum of fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the Authority.

"§ 160A-636. Voting.

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business. Except as provided by G.S. 160A-635(a)(2), each member shall have one vote.

"§ 160A-637. Advisory committees.

The Board of Trustees may provide for the selection of such advisory committees as it may find appropriate, which may or may not include members of the Board of Trustees.

"§ 160A-638. Purpose of the Authority.

The purpose of the authority is to enhance the quality of life in its territorial jurisdiction by promoting the development of sound transportation systems which

provide transportation choices, enhance mobility, accessibility, and safety, encourage economic development and sound growth patterns, and protect the man-made and natural environments of the region.

"**§ 160A-639. General powers of the Authority.**

The general powers of the Authority shall include any or all of the following:

(1) To sue and be sued;

(2) To have a seal;

(3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management;

(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the Authority and to fix their compensation, within the limit of available funds;

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;

(6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice;

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein, and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the same is no longer required for purposes of the Authority, or exchange same for other property or rights which are useful for the Authority's purposes, including but not necessarily limited to parking facilities;

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a public transportation system or to contract for the maintenance, operation or administration thereof, or to lease as lessor the same for maintenance, operation, or administration by private parties, including, but not necessarily limited to, parking facilities;

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government;

(10) To surrender to the State of North Carolina any property no longer required by the Authority;

(11) To develop and make data, plans, information, surveys and studies of public transportation facilities within the territorial jurisdiction of the Authority and to prepare and make recommendations in regard thereto;

(12) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries;

(13) To develop and carry out demonstration projects;

(14) To make, enter into, and perform contracts with private parties, and public transportation companies with respect to the management and operation of public passenger transportation;

(15) To make, enter into, and perform contracts with any public utility, railroad or transportation company for the joint use of property or rights, for the establishment of through routes, joint fares, or transfer of passengers;

(16) To make, enter into, and perform agreements with governmental entities for payments to the Authority for the transportation of persons for whom the governmental entities desire transportation;

(17) With the consent of the unit of local government which would otherwise have jurisdiction to exercise the powers enumerated in this subdivision: to issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements, and in all respects to regulate the operation of buses, taxicabs, and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the Authority as fully as the unit of local government is now or hereafter empowered to do within the territorial jurisdiction of the unit of local government;

(18) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities, and to own or lease property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source whatsoever, but may not operate or contract for the operation of public transportation systems outside the territorial jurisdiction of the Authority except as provided by subdivision (20) of this section;

(19) To enter into and perform contracts and agreements with other public transportation authorities, regional public transportation authorities, or units of local government pursuant to the provisions of G.S. 160A-460 through G.S. 160A-464 (Part 1 of Article 20 of Chapter 160A of the General Statutes); further to enter into contracts and agreements with private transportation companies, but this subdivision does not authorize the operation of, or

contracting for the operation of, service of a public transportation system outside the service area of the Authority;

(20) To operate public transportation systems extending service into any political subdivision of the State of North Carolina unless a particular unit of local government operating its own public transportation system or franchising the operation of a public transportation system by majority vote of its governing board, shall deny consent, but such service may not extend more than 10 miles outside of the territorial jurisdiction of the authority, except that vanpool and carpool service shall not be subject to that mileage limitation;

(21) Except as restricted by covenants in bonds, notes, or equipment trust certificates, to set in its sole discretion rates, fees, and charges for use of its public transportation system;

(22) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the Authority;

(23) To facilitate the coordination of transportation plans in the service area and the activities of the member Metropolitan Planning Organizations;

(24) To maintain databases for the projection of future travel demands in the region;

(25) To provide and operate regional ridesharing and vanpool operations;

(26) To provide and operate regional transportation services for the elderly and handicapped;

(27) To provide other transportation related services, including air quality monitoring and analysis, as determined by the Board of Trustees;

(28) To issue bonds or other obligations of the Authority as provided by law and apply the proceeds thereof to the financing of any public transportation system or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or other obligations; and

(29) To contract for, or to provide and maintain, with respect to the facilities and property owned, leased with or without option to purchase, operated or under the control of the Authority, and within the territory thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages which obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety; for these purposes a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a police officer of the

city or county in which said member of such force is discharging such duties.

"§ 160A-640. Authority of Utilities Commission not affected.

(a) Except as otherwise provided in this Article, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law.

(b) The North Carolina Utilities Commission shall not have jurisdiction over rates, fees, charges, routes, and schedules of an Authority for service within its territorial jurisdiction.

"§ 160A-641. Fiscal accountability.

An Authority is a public authority subject to the provisions of Chapter 159 of the General Statutes.

"§ 160A-642. Funds.

The establishment and operation of an Authority are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the Authority. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the Authority. An Authority may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Transportation may allocate to an Authority any funds appropriated for transportation, or any funds whose use is not restricted by law.

"§ 160A-643. Competition.

No equipment of the Authority may be used for charter, tour, or sight-seeing service.

"§ 160A-644. Effect on existing franchises and operations.

Creation of the Authority shall not have an effect on any existing franchises granted by any unit of local government; such existing franchises shall continue in full force and effect until legally terminated; further, all ordinances and resolutions of the unit of local government regulating local public transportation systems, bus operations, and taxicabs shall continue in full force and effect now and in the future, unless superseded by regulations of the Authority; such superseding, if any, may occur only on the basis of prior mutual agreement between the Authority and the respective unit of local government.

"§ 160A-645. Termination.

The Board of Trustees may terminate the existence of the Authority at any time when it has no outstanding indebtedness. In the event of such termination, all property and assets of the Authority not otherwise encumbered shall automatically become the property of the State of North Carolina, and the State of North Carolina shall succeed to all rights, obligations, and liabilities of the Authority.

"§ 160A-646. Controlling provisions.

Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling.

"**§ 160A-647. Bonds and notes authorized.**

In addition to the powers granted by this Article, the Authority may issue bonds and notes pursuant to the provisions of The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for the purpose of financing public transportation systems or any part thereof and to refund such bonds and notes, whether or not in advance of their maturity or earliest redemption date.

"**§ 160A-648. Equipment trust certificates.**

In addition to the powers here and before granted, the Authority shall have continuing power to purchase equipment, and in connection therewith execute agreements, leases with or without option to purchase, or equipment trust certificates. All money required to be paid by the Authority under the provisions of such agreements, leases with or without option to purchase, and equipment trust certificates shall be payable solely from the fares, fees, rentals, charges, revenues, and earnings of the Authority, monies derived from the sale of any surplus property of the Authority and gifts, grants, and contributions from any source whatever. Payment for such equipment or rentals therefore, may be made in installments; the deferred installments may be evidenced by equipment trust certificates payable solely from the aforesaid revenues or receipts, and title to such equipment may or may not vest in the Authority until the equipment trust certificates are paid.

"**§ 160A-649. Power of eminent domain.**

(a) The Authority shall have continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method, including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority.

(b) Exercise of the power of eminent domain by the Authority shall be in accordance with Chapter 40A of the General Statutes.

"**§ 160A-650. Tax exemption.**

The property of the Authority, both real and personal, its acts, activities, and income shall be exempt from any tax or tax obligation; in the event of any lease of Authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest nor shall it apply to the income of the lessee. Otherwise, however, for the purpose of taxation, when property of the Authority is leased to private parties solely for the purpose of the Authority, the acts and activities of the lessee shall be considered as the acts and activities of the Authority and the exemption. The interest on bonds or obligations issued by the Authority shall be exempt from State taxes.

"**§ 160A-651. Removal and relocation of utility structures.**

(a) The Authority shall have the power to require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances, or facilities in, upon, under, over, across or along any ways on which the Authority has the right to own, construct, operate, or maintain its public transportation system, to relocate such installation, structures, equipment, apparatus, appliances, or facilities from their locations, or, in the sole discretion of the affected public utility, railroad, or other public service corporation, to remove

such installations, structures, equipment, apparatus, appliances, or facilities from their locations.

(b) If the owner or operator thereof fails or refuses to relocate them, the Authority may proceed to do so.

(c) The Authority shall provide any necessary new locations and necessary real estate interests for such relocation, and for that purpose the power of eminent domain as provided in G.S. 160A-649 may be exercised provided the new locations shall not be in, on or above, a public highway; the Authority may also acquire the necessary new locations by purchase or otherwise.

(d) Any affected public utility, railroad, or other public service corporation shall be compensated for any real estate interest taken in a manner consistent with G.S. 160A-649, subject to the right of the Authority to reduce the compensation due by the value of any property exchanged under this section.

(e) The method and procedures of a particular adjustment to the facilities of a public utility, railroad, or other public service corporation shall be covered by an agreement between the Authority and the affected party or parties.

(f) The Authority shall reimburse the public utility, railroad, or other public service corporation, for the cost of relocations or removals which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances, or facilities and any salvage value derived from the old installations, structures, equipment, apparatus or appliances."

Section 2. G.S. 105-164.14(c)(15) reads as rewritten:

"(15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General ~~Statutes.~~ Statutes, or a regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes."

Section 3. G.S. 159-81(1) reads as rewritten:

"(1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional transportation authority, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, and joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, but not any other forms of local government."

Section 3.1. If Senate Bill 352 is enacted and provides that funds appropriated to the Department of Transportation for the 1997-98 fiscal year shall be used to fund a Major Investment Study (MIS) which shall include:

(1) A passenger rail proposal providing service between Asheville and Raleigh through Winston-Salem generally following the I-40 corridor; and

(2) A passenger rail proposal providing for commuter rail services between Winston-Salem, Greensboro, High Point, and outlying communities,

then notwithstanding that act, the MIS shall be administered by the Regional Transportation Authority created under this act which includes Guilford and Forsyth Counties, in consultation with the Department of Transportation, the Forsyth County Metropolitan Planning Organization (MPO), the Greensboro MPO, and the High Point MPO.

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

EXPLANATION OF HOUSE BILL 993:
Regional Transportation Authorities (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 30, 1997
SPONSOR: Representative Gray

House Bill 993 provides for the creation of a regional transportation authority in an area of a Metropolitan Planning Organization that meets all of the following criteria:

- The area consists of all or part of five counties, all counties of which form a contiguous territory.
- At least two of those counties are contiguous to each other and each have a population of 250,000 or more.
- The other three counties each have a population of 100,000 or more.

This description describes the Triad area consisting of Forsyth, Guilford, Randolph, Davidson, and Alamance Counties. The four major cities involved in the creation of the authority are Greensboro, High Point, Winston-Salem, and Burlington.

The purpose and powers of this regional transportation authority would be very similar to the purpose and powers of the regional public transportation authority the General Assembly created in 1989 for the Triangle area. Unlike the 1989 legislation, this bill does not give the authority created by this act any taxing power. The transportation authority created in 1989 for the Triangle area may levy an annual motor vehicle registration tax of $5 on motor vehicles that have a property tax situs in Orange, Durham, or Wake Counties. The only other differences between the two are their territorial jurisdiction and the make-up of their board of trustees.

The Authority would be created to promote the development of sound transportation systems in the area served by the Authority. The Authority could be created upon the adoption of a resolution by the city councils of the four largest cities within the area that could be served by the authority. The governing body of the authority would be the Board of Trustees. The Board of Trustees would consist of the mayor of the four largest cities served by the authority and the chair of each Metropolitan Planning Organization in the territorial jurisdiction of the authority. If there is an agreement between the

Board of Trustees and the boards of county commissioners of the counties served by the authority, then the chair of the board of commissioners of any county within the territorial jurisdiction of the county may serve on the Board of Trustees. Two members of the Board of Transportation appointed by the Secretary of Transportation would also serve on the Board of Trustees as ex officio nonvoting members.

The powers of the Board of Trustees of the Authority would include:

- The authority to own, lease, and operate public transportation systems. However, the creation of the authority would not have an effect on any existing franchises granted by a unit of local government or upon any local government ordinances regulating local public transportation systems.
- The authority to set in its sole discretion rates, fees, and charges for use of its public transportation systems.
- The authority to issue bonds and notes pursuant to the provisions of The State and Local Government Revenue Bond Act.
- The authority to make installment purchases.
- The authority to exercise the power of eminent domain.
- The authority to require public utilities to relocate their structures and equipment if necessary.

An authority would be a public authority subject to the Local Government Finance Act and eligible for the appropriation of money from State and local governments. The property of the Authority would be exempt from property tax and it would be eligible for annual refunds of sales and use taxes paid. The Board of Trustees could terminate the existence of the Authority at any time when it has no outstanding indebtedness. In the event of termination, all property and assets of the Authority become the property of the State.

The House budget, contained in Senate Bill 352 (5th Edition), allocates $750,000 from the funds appropriated to the Department of Transportation for a Major Investment Study. The study would include a passenger rail proposal providing service between Asheville and Raleigh through Winston-Salem and a passenger rail proposal providing for commuter rail services between Winston-Salem, Greensboro, High Point, and outlying communities. Section 3 of this bill provides that if the Study is funded by the General Assembly, the regional transportation authority created pursuant to this act will administer it, in consultation with the Department of Transportation and the Metropolitan Planning Organizations of Forsyth County, Greensboro, and High Point.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 993
SHORT TITLE: Regional Transportation Authorities
SPONSOR(S): Committee Substitute

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	**This act does not affect State or local revenues**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: **Regional Transit authorities organized under Article 27.**

EFFECTIVE DATE: When it becomes law

BILL SUMMARY:

Adds a new Article 26 to General Statutes Chapter 160A to allow the creation of additional regional transportation authorities (GS 160A-600 through 160A-625 now allows creation of authorities within limited areas). Allows creation of regional transportation authority (RTA) for the area of any metropolitan planning organization of the state that, at the time of creation, consists of all or part of five contiguous counties if at least two of the counties each have a population of at least 250,000 and are contiguous *and* if the other three counties each have a population of at least 100,000. Authorizes the city councils of the four largest cities within the area to create an RTA according to the procedures in the act. Allows the new RTA, with the consent of the affected boards of county commissioners, to expand to include contiguous areas up to a total service area of twelve counties. Governing body of RTA will consist of the mayors of the four cities with the largest populations within the service area; two members of the State Board of Transportation appointed by the Secretary of Transportation (as ex officio, nonvoting members); the chair of each metropolitan planning organization in the service area; and the chair of any board of county commissioners within the service area. Sets forth powers of RTA, including the power to issue bonds and notes (pursuant to the Local Government Revenue Bond Act) for the purpose of financing public transportation systems; purchase and lease equipment; acquire property by eminent domain; and require public utilities, railroads, and other public service corporations to relocate utility structures. Allows state and local government units to appropriate funds to the RTA for its operations.

House committee substitute makes the following changes to 1st edition. Recodifies new article as General Statutes Chapter 160A, Article 27 (was, Art. 26). Provides that if S 352 is enacted with funds appropriated to Department of Transportation for 1997-98, then major investment study will be made to include a passenger rail proposal providing service between Asheville and Raleigh through Winston-Salem generally following the I-40 corridor, and a passenger rail proposal providing for commuter rail services between Winston-Salem, Greensboro, High Point, and outlying communities. MIS will be administered by regional transportation authority created under this act, which includes Guilford and Forsyth Counties, in consultation with Department of Transportation, Forsyth County Metropolitan Planning Organization (MPO), Greensboro MPO, and High Point MPO.

ASSUMPTIONS AND METHODOLOGY:
House Bill 1231 authorizes regional transit authorities (RTA), created pursuant to Article 27, to charge a $5.00 registration fee on motor vehicles sited in the counties of the authority for property taxation. In addition, an RTA is authorized to levy a 5% gross receipts tax on the short term lease of motor vehicles leased in the region. The expected revenue from these two sources in fiscal year 1997-98 is $3.3 million. The revenue is estimated to grow to $7 million by fiscal year 2001-02. Municipal units of government located within the region are authorized to levy a $5.00 license tax on motor vehicles. The revenue derived from this tax is expected to be $1.6 million in fiscal year 1997-98 and grow to $3.4 million by fiscal year 2001-02.

Bill Summary Source: Institute of Government

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk
APPROVED BY:
DATE: June 30, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 305
Committee Substitute Favorable 4/29/97

Short Title: Peanut Assessment Cap. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE LIMIT FOR AN ASSESSMENT WHEN THE ASSESSMENT IS PAID BY PEANUT PRODUCERS FOR THE PROMOTION OF PEANUTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-557 reads as rewritten:

"**§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.**

With respect to any referendum conducted under the provisions of this Article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least 30 days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this Article shall exceed one half of one percent (1/2 of 1%) of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on the volume of milk sold not to exceed one percent (1%) of the statewide blend price paid to all North Carolina producers during the previous calendar year for three and one-half percent (3.5%) milk as

computed by the North Carolina Milk Commission. Provided further, that the assessment authorized by this Article and collected by the Commissioner of Agriculture to be paid to the North Carolina Yam Commission, Inc., or other duly certified agencies entitled thereto for research, marketing and promotional programs related to yams or sweet potatoes may be levied at a rate not to exceed two percent (2%) of the value of the year's production of that agricultural commodity grown by any farmer, producer or grower included in the group to which the referendum is submitted, and when authorized by two-thirds or more of the farmers, producers or growers in the area in which the referendum is conducted, the rate of the assessment may remain in effect for the length of time provided in the referendum. Provided further, that the assessment authorized by this Article on peanuts may not exceed two percent (2%) of the price paid to the producer."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 305
Committee Substitute Favorable 4/29/97
Proposed Senate Committee Substitute H305-PCS6298

Short Title: Peanut Assessment Cap. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE LIMIT FOR AN ASSESSMENT WHEN THE ASSESSMENT IS PAID BY PEANUT PRODUCERS FOR THE PROMOTION OF PEANUTS AND AMENDING THE STRAWBERRY ASSESSMENT ACT TO IMPROVE THE COLLECTION OF ASSESSMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-557 reads as rewritten:

"**§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.**

With respect to any referendum conducted under the provisions of this Article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least 30 days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this Article shall exceed one half of one percent (1/2 of 1%) of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on the volume of milk sold not to exceed

one percent (1%) of the statewide blend price paid to all North Carolina producers during the previous calendar year for three and one-half percent (3.5%) milk as computed by the North Carolina Milk Commission. Provided further, that the assessment authorized by this Article and collected by the Commissioner of Agriculture to be paid to the North Carolina Yam Commission, Inc., or other duly certified agencies entitled thereto for research, marketing and promotional programs related to yams or sweet potatoes may be levied at a rate not to exceed two percent (2%) of the value of the year's production of that agricultural commodity grown by any farmer, producer or grower included in the group to which the referendum is submitted, and when authorized by two-thirds or more of the farmers, producers or growers in the area in which the referendum is conducted, the rate of the assessment may remain in effect for the length of time provided in the referendum. Provided further, that the assessment authorized by this Article on peanuts may not exceed two percent (2%) of the price paid to the producer."

Section 2. G.S. 106-783 is amended by adding a new subsection (4) to read:

"(4) 'Strawberry plant seller' means a person who sells strawberry plants to growers for commercial production of strawberries."

Section 3. G.S. 106-785 reads as rewritten:

"**§ 106-785. Two-thirds vote required; collection of ~~assessment.~~ assessment; penalties; audits.**

(a) The assessment shall not be collected unless at least two-thirds of the votes cast in the referendum are in favor of the assessment. If at least two-thirds of the votes cast in the referendum are in favor of the assessment, then the Department shall notify all strawberry plant ~~growers~~ sellers of the assessment. The assessment shall be added by the strawberry plant ~~growers~~ sellers to the price of all strawberry plants sold for commercial planting in North ~~Carolina~~ Carolina. ~~and shall be remitted to the Department no later than the 10th day following the end of each calendar quarter.~~ The Department shall provide forms to the strawberry plant ~~growers~~ sellers for reporting the assessment. All strawberry plant sellers shall provide each purchaser of strawberry plants for commercial production with an invoice that sets forth the amount of the assessment on the purchase covered by the invoice. Persons who purchase strawberry plants for commercial production on which the assessment has not been collected by the seller shall report such purchases and pay the assessment to the Department.

(b) ~~The Association may bring an action against any plant grower who fails to pay the assessment to collect unpaid assessments, and if successful shall also recover the cost of such action, including attorney's fees.~~ Each strawberry plant seller shall remit to the Department no later than the tenth day following the end of each calendar quarter the assessment on strawberry plants sold during that quarter. Any strawberry plant seller who fails to remit the assessment for the previous year's sales by January 10 shall pay a penalty of five percent (5%) of the unpaid assessment plus a penalty of one percent (1%) of the unpaid assessment for each month after January 10 that the assessment remains unpaid.

(c) The Association may conduct inspections or audits of the books of any strawberry plant seller. If the inspection or audit reveals that a strawberry plant seller has willfully failed to remit assessments when due, the seller shall pay the Association the reasonable costs of the inspection or audit.

(d) The Association may bring an action to collect unpaid assessments, penalties, and reasonable costs of any inspection or audit as provided in subsection (c) of this section, against any strawberry plant seller who fails to pay the assessment, penalties, or costs. If successful, the Association shall also recover the cost of such action, including attorneys' fees."

Section 4. Section 3 of this act becomes effective October 1, 1997, and applies to assessments accruing on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1044

Short Title: County Tax Information Recipient. (Public)

Sponsors: Representative Rogers.

Referred to: Finance.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTIES TO DESIGNATE AN OFFICIAL TO RECEIVE SALES TAX REFUND INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14(f) reads as rewritten:

"(f) **(See editor's note)** Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the ~~chair of the board of county commissioners~~ designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection (b) or (c) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection (b) or (c) of this section shall provide the ~~chair of the board of county commissioners~~ designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection (b) or (c) of this section is incorrect, it shall file an amended request for the refund."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1044
Proposed Senate Committee Substitute H1044-PCS7341

Short Title: County Tax Information Recipient. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTIES TO DESIGNATE AN OFFICIAL TO RECEIVE SALES TAX REFUND INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14(f) reads as rewritten:

"(f) **(See editor's note)** Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the ~~chair of the board of county commissioners~~ designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection (b) or (c) of this section of at least one thousand dollars ($1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection (b) or (c) of this section shall provide the ~~chair of the board of county commissioners~~ designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection (b) or (c) of this section is incorrect, it shall file an amended request for the refund."

Section 2. G.S. 105-259(b)(6a) reads as rewritten:

"(6a) To furnish ~~the chair of a board of county commissioners~~ the county official designated under G.S. 105-164.14(f) a list of claimants that have received a refund of the county sales or use tax to the extent authorized in G.S. 105-164.14(f)."

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

EXPLANATION OF HOUSE BILL 1044:
County Tax Information Recipient

TO: Senate Finance Subcommittee
FROM: Cindy Avrette, Committee Counsel
DATE: July 7, 1997
SPONSOR: Representative Rogers

In 1995, the General Assembly gave counties access to information regarding local sales tax refunds paid to nonprofit corporations and governmental entities. Under prior law, counties did not have access to this information because the local sales tax is collected by the State and the tax secrecy statute prevents the Department of Revenue from disclosing information about individual taxpayers. Without information about local sales tax refunds, counties were not able to audit claims for refunds against them. The counties had to rely on the Department of Revenue to audit the claims, but the Department does not have enough resources to provide the level of audit some counties wished to provide for themselves.

To obtain information concerning local sale tax refunds, a county must request the information in writing from the Secretary of Revenue. The Secretary has 30 days to provide the chair of the board of county commissioners with a list of each nonprofit corporation or governmental entity that received a refund of at least $1,000 of that county's local taxes within the last 12 months. **House Bill 1044** allows the county board of commissioners to designate a county official to receive this information from the Department of Revenue. If the board has not adopted such a resolution, then the Department will continue to send the requested information to the chair of the board of county commissioners.

The county uses the list it receives from the Department to identify entities whose refund claims the county may wish to audit. Upon the written request of the county, an entity that has received a refund must provide the county with a copy of the request for refund, along with supporting documentation requested by the county to verify the request. If an entity determines that a refund it has received has been charged to the wrong county, it must file an amended return for the refund. The amended return will enable the Department to make the appropriate adjustments in the subsequent quarterly distribution of local sales tax revenue.

Under G.S. 105-164.14, nonprofit corporations and certain governmental entities may seek a refund of State and local sales taxes they pay on their purchases. To do so, these entities must file a written request for refund with the

Department of Revenue and name the counties where the purchases were made. The Secretary of Revenue deducts the claimed refunds of local sales taxes from tax revenue distributed to the counties. Errors in identifying the correct county in refund claims occur because the local sales tax applies to the county in which the retailer is located, not the county in which the purchaser is located. Some counties believe that entities located in one county who pay sales tax to another county are claiming the refund against the county in which they are located, rather than against the county in which they made the purchase.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 337
Senate Finance Committee Substitute Adopted 6/18/97
Proposed Senate Committee Substitute H337-PCS2358

Short Title: Randolph Occupancy Tax. (Local)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE RANDOLPH COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) **Authorization and scope.** The Randolph County Board of Commissioners may by resolution levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished to nonprofit charitable, educational, or religious organizations for use in furthering their nonprofit purpose.

(b) **Administration.** A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) **Distribution and use of tax revenue.** Randolph County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Randolph Tourism Development Authority. The Authority may use these funds and any other revenue it receives only to develop or promote travel and tourism and for tourism-related expenditures in Randolph County. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Randolph County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures and other expenditures that, in the judgment of the Authority, will facilitate and promote tourism. Examples of tourism-related expenditures include expenditures to create, advertise, promote, and support cultural programs, events, festivals, public park and recreation areas, historic preservation and museums, beautification projects, parking facilities, and other public amenities and services.

Section 2. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, reads as rewritten:

"(b) This section applies only to ~~Madison and Nash~~ Madison, Nash, and Randolph Counties."

Section 3. Tourism Development Authority. (a) **Appointment and membership.** When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall be composed of nine members to be appointed by the board of commissioners as follows:

(1) Seat 1 shall represent the hotel and motel industry, seat 4 shall represent the North Carolina Zoological Park, seat 7 is unrestricted, and seat 9 shall represent the county.

(2) Seats 2, 3, 5, and 6 shall be appointed upon the recommendation of the Archdale/Trinity Chamber of Commerce, the Asheboro/Randolph Chamber of Commerce, the Liberty Chamber of Commerce, and the Randleman Chamber of Commerce, respectively.

(3) Seat 8 shall represent the hotel and motel industry and shall be appointed upon the recommendation of the Asheboro/Randolph Chamber of Commerce.

In appointing and recommending members, each entity shall strive to select individuals who either have expertise in promoting and developing travel and tourism or are affiliated with organizations that collect the tax. The board of

commissioners may reject the recommendation of a chamber of commerce and require the chamber to submit additional names within 30 days after the rejection. If the chamber does not submit additional names within this period, the board of commissioners may appoint someone to the seat based upon its own recommendation.

All members of the Authority serve at the pleasure of the board of commissioners and may be removed by the board at any time. The board of commissioners shall designate one member of the Authority as chair and another as cochair. Members shall serve without compensation.

Except for initial terms, the term of office shall be for three years. No member may serve more than two consecutive three-year terms. The initial terms for seats 1, 2, and 3 shall be one year. The initial terms for seats 4, 5, and 6 shall be two years. The initial terms for seats 7, 8, and 9 shall be three years.

The Authority shall meet at the call of the chair and shall adopt bylaws and rules of procedure to govern its meetings. The Finance Officer for Randolph County shall be the ex officio finance officer of the Authority.

(b) **Duties.** The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act.

(c) **Powers.** In addition to other powers conferred by law, the Authority may contract with any person, firm, corporation, or agency to assist it in carrying out its duties. All contracts the Authority enters into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations. The Authority may accept contributions from any source to be used for the purposes provided in Section 1 of this act.

(d) **Reports.** The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 337
Senate Finance Committee Substitute Adopted 6/18/97

Short Title: Randolph Occupancy Tax. (Local)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE RANDOLPH COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) **Authorization and scope.** The Randolph County Board of Commissioners may by resolution levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished to nonprofit charitable, educational, or religious organizations for use in furthering their nonprofit purpose.

(b) **Administration.** A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) **Distribution and use of tax revenue.** Randolph County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Randolph Tourism Development Authority. The Authority may use these funds and any other revenue it receives only to develop or promote travel and tourism and for tourism-related expenditures in Randolph County. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Randolph County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures and other expenditures that, in the judgment of the Authority, will facilitate and promote tourism. Examples of tourism-related expenditures include expenditures to create, advertise, promote, and support cultural programs, events, festivals, public park and recreation areas, historic preservation and museums, beautification projects, parking facilities, and other public amenities and services.

Section 2. Section 3(b) of S.L. 1997-102 reads as rewritten:

"(b) This section applies only to Madison ~~County.~~ and Randolph Counties."

Section 3. Tourism Development Authority. (a) **Appointment and membership.** When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall be composed of nine members to be appointed by the board of commissioners as follows:

(1) Seat 1 shall represent the hotel and motel industry, seat 4 shall represent the North Carolina Zoological Park, seat 7 is unrestricted, and seat 9 shall represent the county.

(2) Seats 2, 3, 5, and 6 shall be appointed upon the recommendation of the Archdale/Trinity Chamber of Commerce, the Asheboro/Randolph Chamber of Commerce, the Liberty Chamber of Commerce, and the Randleman Chamber of Commerce, respectively.

(3) Seat 8 shall represent the hotel and motel industry and shall be appointed upon the recommendation of the Asheboro/Randolph Chamber of Commerce.

In appointing and recommending members, each entity shall strive to select individuals who either have expertise in promoting and developing travel and tourism or are affiliated with organizations that collect the tax. The board of commissioners may reject the recommendation of a chamber of commerce and require the chamber to submit additional names within 30 days after the rejection. If the chamber does not submit additional names within this period, the board of

commissioners may appoint someone to the seat based upon its own recommendation.

All members of the Authority serve at the pleasure of the board of commissioners and may be removed by the board at any time. The board of commissioners shall designate one member of the Authority as chair and another as cochair. Members shall serve without compensation.

Except for initial terms, the term of office shall be for three years. No member may serve more than two consecutive three-year terms. The initial terms for seats 1, 2, and 3 shall be one year. The initial terms for seats 4, 5, and 6 shall be two years. The initial terms for seats 7, 8, and 9 shall be three years.

The Authority shall meet at the call of the chair and shall adopt bylaws and rules of procedure to govern its meetings. The Finance Officer for Randolph County shall be the ex officio finance officer of the Authority.

(b) **Duties.** The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act.

(c) **Powers.** In addition to other powers conferred by law, the Authority may contract with any person, firm, corporation, or agency to assist it in carrying out its duties. All contracts the Authority enters into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations. The Authority may accept contributions from any source to be used for the purposes provided in Section 1 of this act.

(d) **Reports.** The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 457
Committee Substitute Favorable 4/2/97

Short Title: Amend Forest Development Act/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW RECOVERY OF FUNDS PAID AS FOREST DEVELOPMENT COST-SHARING PAYMENTS WHEN TREES ARE NOT MAINTAINED AT LEAST TEN YEARS AND TO CONVERT THE FOREST DEVELOPMENT FUND TO ONE THAT ACCRUES INTEREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-178 reads as rewritten:

"**§ 113A-178. Definitions.**

As used in this Article:

(1) 'Approved forest management plan' ~~shall mean~~ means the forest management plan submitted by the eligible landowner and approved by the Secretary. Such plan shall include forest management practices to insure both maximum forest productivity and environmental protection of the lands to be treated under the management plan.

(2) 'Approved practices' ~~shall mean~~ mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, or of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature timber. Such practices shall include those required to accomplish site preparation, natural and artificial forestation, noncommercial removal of residual stands for silvicultural purposes, and

cultivation of established young growth of desirable trees. In each case, approved practices will be determined by the needs of the individual forest stand. These practices shall include existing practices and such practices as are developed in the future to insure both maximum forest productivity and environmental protection.

(3) 'Department' ~~shall mean~~ means the Department of Environment, Health, and Natural Resources.

(4) 'Eligible landowner' ~~shall mean~~ means a private individual, group, association or corporation owning land suitable for forestry purposes. Where forest land is owned jointly by more than one individual, group, association or corporation, as tenants in common, tenants by the entirety, or otherwise, the joint owners shall be considered, for the purpose of this Article, as one eligible landowner and entitled to receive cost-sharing payments as provided herein only once during each fiscal year.

(5) 'Eligible ~~lands' shall mean~~ land' means land owned by an eligible landowner.

(6) 'Forest development assessment' ~~shall mean~~ means an assessment on primary forest products from timber severed in North Carolina for the funding of the provisions of this Article, as authorized by the General Assembly.

(7) 'Forest development ~~cost-sharing~~ cost-sharing payment' ~~shall mean~~ means financial assistance to partially cover the costs of implementing approved practices in such amounts as the Secretary shall determine, subject to the limitations of this Article.

(8) 'Forest development fund' ~~shall mean~~ means the special nonlapsing fund established in the Department of Environment, Health, and Natural Resources, designated as the Forest Development Fund, created by G.S. 113A-183.

(9) 'Secretary' ~~shall mean~~ means the Secretary of Environment, Health, and Natural Resources.

(10) 'Maintain' means to make every reasonable effort to protect the reforested area from destructive fire and grazing, insects, disease, noxious weeds, and being cleared or partially cleared of trees for any purpose other than as provided in an approved forest management plan."

Section 2. Article 11 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-180.1. Cost-share agreements.**

(a) In order to receive forest development cost-share payments, an eligible landowner shall enter into a written agreement with the Department describing the eligible land, setting forth the approved practices implemented for the area and

covered by the approved forest management plan, and agreeing to maintain those practices for a 10-year period.

(b) A landowner who fails to maintain the practice or practices for a 10-year period in accordance with the agreement set forth in subsection (a) of this section shall repay to the Fund all cost-sharing funds received for that area.

(c) If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner shall:

(1) Obtain a written statement from the new owner or transferee in which the new owner or transferee agrees to maintain the approved practices for the remainder of the 10-year period; or

(2) Repay to the Fund all cost-sharing funds received for implementing the approved practices on the land.

If a written statement is obtained from the new owner or transferee, the original landowner will no longer be responsible for maintaining the approved practices or repaying the cost-sharing funds. The responsibility for maintaining those practices for the remainder of the 10 years shall devolve to the new owner or transferee."

Section 3. G.S. 113A-183 reads as rewritten:

"**§ 113A-183. Forest Development Fund.**

(a) ~~There is hereby~~ The Forest Development Fund is created in the Department of Environment, Health, and Natural Resources as a nonreverting ~~fund to be designated the Forest Development Fund,~~ fund, for which fiscal management and responsibility are ~~hereby~~ vested in the Secretary. The Fund is a special trust fund, and the State Treasurer shall credit interest to the Fund.

(b) This ~~fund~~ Fund shall be the depository for all revenue derived from the forest development assessment on primary forest product processors as authorized by the General Assembly, ~~and~~ for any funds appropriated specifically for the forest development program from the ~~general fund.~~ General Fund, for monetary contribution and donations, and for accrued interest. ~~Those funds appropriated from the general fund remaining in the Forest Development Fund at the end of any fiscal year shall revert to the general fund, but revenues~~ Revenues derived from the forest development assessment ~~shall not revert but~~ shall remain in the Forest Development Fund until expended under the provisions of this Article.

~~(c) In any fiscal year, expenditures from the Forest Development Fund shall be limited to four times the amount of the general fund appropriation for that year.~~

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Processor Assessment Act shall be used for program support under the provisions of G.S. 113A-179(c).

(e) Funds used for the purchase of equipment under the provisions of G.S. 113A-179(d) shall be limited to appropriations from the ~~general fund~~ General Fund to the Forest Development Fund designated specifically for equipment purchase."

Section 4. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 457
Committee Substitute Favorable 4/2/97
Proposed Senate Committee Substitute H457-PCS4131

Short Title: Amend Forest Development Act/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW RECOVERY OF FUNDS PAID AS FOREST DEVELOPMENT COST-SHARING PAYMENTS WHEN TREES ARE NOT MAINTAINED AT LEAST TEN YEARS AND TO CONVERT THE FOREST DEVELOPMENT FUND TO ONE THAT ACCRUES INTEREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-178 reads as rewritten:

"**§ 113A-178. Definitions.**

As used in this Article:

(1) 'Approved forest management plan' ~~shall mean~~ means the forest management plan submitted by the eligible landowner and approved by the Secretary. Such plan shall include forest management practices to insure both maximum forest productivity and environmental protection of the lands to be treated under the management plan.

(2) 'Approved practices' ~~shall mean~~ mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, or of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature timber. Such practices shall include those required to accomplish site preparation, natural and artificial forestation, noncommercial

removal of residual stands for silvicultural purposes, and cultivation of established young growth of desirable trees. In each case, approved practices will be determined by the needs of the individual forest stand. These practices shall include existing practices and such practices as are developed in the future to insure both maximum forest productivity and environmental protection.

(3) 'Department' ~~shall mean~~ means the Department of Environment, Health, and Natural Resources.

(4) 'Eligible landowner' ~~shall mean~~ means a private individual, group, association or corporation owning land suitable for forestry purposes. Where forest land is owned jointly by more than one individual, group, association or corporation, as tenants in common, tenants by the entirety, or otherwise, the joint owners shall be considered, for the purpose of this Article, as one eligible landowner and entitled to receive cost-sharing payments as provided herein only once during each fiscal year.

(5) 'Eligible ~~lands' shall mean~~ land' means land owned by an eligible landowner.

(6) 'Forest development assessment' ~~shall mean~~ means an assessment on primary forest products from timber severed in North Carolina for the funding of the provisions of this Article, as authorized by the General Assembly.

(7) 'Forest development ~~cost-sharing~~ cost-sharing payment' ~~shall mean~~ means financial assistance to partially cover the costs of implementing approved practices in such amounts as the Secretary shall determine, subject to the limitations of this Article.

(8) 'Forest development fund' ~~shall mean~~ means the ~~special nonlapsing fund established in the Department of Environment, Health, and Natural Resources, designated as the~~ Forest Development ~~Fund,~~ Fund created by G.S. 113A-183.

(9) 'Secretary' ~~shall mean~~ means the Secretary of Environment, Health, and Natural Resources.

(10) 'Maintain' means to make every reasonable effort to protect the reforested area from destructive fire and grazing, insects, disease, noxious weeds, and being cleared or partially cleared of trees for any purpose other than as provided in an approved forest management plan."

Section 2. Article 11 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-180.1. Cost-share agreements.**

(a) In order to receive forest development cost-share payments, an eligible landowner shall enter into a written agreement with the Department describing the eligible land, setting forth the approved practices implemented for the area and

covered by the approved forest management plan, and agreeing to maintain those practices for a 10-year period.

(b) A landowner who fails to maintain the practice or practices for a 10-year period in accordance with the agreement set forth in subsection (a) of this section shall repay to the Fund all cost-sharing funds received for that area.

(c) If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner shall:

(1) Obtain a written statement from the new owner or transferee in which the new owner or transferee agrees to maintain the approved practices for the remainder of the 10-year period; or

(2) Repay to the Fund all cost-sharing funds received for implementing the approved practices on the land.

If a written statement is obtained from the new owner or transferee, the original landowner will no longer be responsible for maintaining the approved practices or repaying the cost-sharing funds. The responsibility for maintaining those practices for the remainder of the 10 years shall devolve to the new owner or transferee."

Section 3. G.S. 113A-183 reads as rewritten:

"**§ 113A-183. Forest Development Fund.**

(a) ~~There is hereby~~ The Forest Development Fund is created in the Department of Environment, Health, and Natural Resources as a ~~fund to be designated the Forest Development Fund, for which fiscal management and responsibility are hereby vested in the Secretary.~~ special fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to it. The Fund is created to provide revenue to implement this Article. The Fund consists of the following revenue:

(1) Assessments on primary forest products collected under Article 12 of Chapter 113A of the General Statutes.

(2) General Fund appropriations.

(3) Gifts and grants made to the Fund.

~~(b) This fund shall be the depository for all revenue derived from the forest development assessment on primary forest product processors as authorized by the General Assembly, and for any funds appropriated specifically for the forest development program from the general fund. Those funds appropriated from the general fund remaining in the Forest Development Fund at the end of any fiscal year shall revert to the general fund, but revenues derived from the forest development assessment shall not revert but shall remain in the Forest Development Fund until expended under the provisions of this Article.~~

~~(c) In any fiscal year, expenditures from the Forest Development Fund shall be limited to four times the amount of the general fund appropriation for that year.~~

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Processor Assessment Act ~~shall~~ may be used for program support under the provisions of G.S. 113A-179(c).

(e) Funds used for the purchase of equipment under the provisions of G.S. 113A-179(d) shall be limited to appropriations from the ~~general fund~~ General Fund to the Forest Development Fund designated specifically for equipment purchase."

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

EXPLANATION OF HOUSE BILL 457:
Amend Forest Development Act (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 7, 1997
SPONSOR: Representative Weatherly
Agency Bill

House Bill 457 amends the Forest Development Act in three ways:

- It requires a landowner to enter into a written agreement with the Department of Environment, Health, and Natural Resources before the landowner can receive any cost-sharing payments. The landowner must agree to implement approved forestry practices on land suitable for forestry purposes and must agree to maintain those practices for at least 10 years. Under the bill, if a landowner fails to maintain the practices for a 10-year period, the landowner must repay all cost-sharing funds received for that land. If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner may do one of two things: (1) obtain an agreement from the new owner to maintain the approved practices for the remainder of the 10-year period; or (2) repay the cost-sharing payments.
- It makes the Forest Development Fund a non-reverting, interest-bearing account.
- It repeals the expenditure limit on the Fund. Under current law, expenditures from the Fund are limited to four times the amount of the General Fund appropriation that year. This bill repeals this limitation.

The proposed committee substitute clarifies what type of fund the Forest Development Fund is and it amends the effective date. Under the original bill, the act became effective June 30, 1997.

The legislature created the State's first cost-sharing program and the companion forest product assessment in 1977. The Forest Development Program was designed to encourage woodland owners to reforest their land after harvest and to put idle or underproductive land into trees. The program offers cost share assistance to private landowners as an incentive to put and keep forestland in a forest development plan. There is an assessment levied on primary forest products processed from North Carolina timber to provide the major source of funds for this program. The General Assembly also appropriates money for the program. The collection of the assessment is suspended in any fiscal year in

which the General Assembly fails to make General Fund appropriations to the Fund or in which there is carried forward from previous years a balance of unobligated funds in the Fund greater than twice the amount appropriated from the General Fund for that fiscal year.

An eligible landowner may receive forest development cost sharing payments for satisfactorily completing approved forestry practices. The amount of assistance cannot exceed the lesser of 60% of the landowner's actual per acre cost incurred in implementing the approved practices or 60% of the prevailing per acre cost as determined by the Secretary. In 1995, it was estimated that 561,000 acres had been planted through the program. Since the program began, instances of willful destruction and neglect of trees for which cost-sharing payments have been received are increasing. The investment sought to encourage is lost when the planted trees are not brought full cycle to commercial harvest. To address this problem, this bill requires recipients of the cost share funds to reimburse the program if trees are not maintained and protected for 10 years. The funds would be used to fund new projects.

There has not been an increase in the assessment rate since the establishment of the program 1977. The State has appropriated $700,000 to the Fund each year since 1993. However, at the current rate, existing funds are not expect to last throughout the fiscal year. Under the current law, any State appropriations left in the fund at the end of the fiscal year revert to the General Fund and any interest accruing on the money in the Fund is credited to the General Fund. Under this bill, the Fund becomes an interest-bearing, non-reverting account to help maintain and increase the revenue available in the Fund.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 457
SHORT TITLE: Amend Forest Development Act
SPONSOR(S): Representative Weatherly

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	Between $195,000 and $260,000 in earned interest annually				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Primary Forest Produce Assessment Act

EFFECTIVE DATE: When it becomes law

BILL SUMMARY:

The proposed act amends General Statute 113A-178 to provide that landowners who do not maintain for ten years the areas and trees for which they have received cost-sharing funds must repay those funds to the Forest Development Fund. The word "maintain" is defined as making every reasonable effort to protect the reforested area from destructive fire and grazing, insects, disease, noxious weeds, and unauthorized clearing of trees. Also amends G.S. 113A-183 to provide that funds in the Forest Development Fund, including funds appropriated from the General Fund, do not revert and that interest on the funds shall be credited to the Forest Development Fund. Also eliminates provision restricting expenditures from Forest Development Fund to four times the amount of General Fund appropriations for that year.

The original bill, replaced by the House Committee Substitute, included a requirement that eligible landowners maintain approved practices for 10 years, and repay cost-sharing funds if they do not. Substitute replaces this requirement with provision for written agreement under which landowner agrees to maintain practices for 10 years and repay funds if they fail to do so. Provides for continuation of approved practices during 10-year period if original landowner relinquishes control or title to land.
Source: Institute of Government Bill Digest

ASSUMPTIONS AND METHODOLOGY:

The fund annually maintains a balance of $3 to $4 million in cost sharing assistance that is obligated for approved projects. (After a project is approved landowners are given one year to begin and one year to complete the project. There are also cases where extensions are granted. Once a project has been approved the amount is designated within the fund and is disbursed when the project is complete.) The current interest rate on short term investments, made by the State Treasurer, is 6.486%. The expected gain in earned interest, based on the stated balance, is between $195,000 and $260,00 annually.
Source: Division of forest Resources; Dept. of Environment, Health, and Natural Resources

FISCAL RESEARCH DIVISION: 733-4910
PREPARED BY: Warren Plonk
APPROVED BY:
DATE: July 7, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 340
Committee Substitute Favorable 4/10/97

Short Title: Kannapolis Property Acquisitions. (Local)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE CITY OF KANNAPOLIS MAY CONDEMN OR ACQUIRE PROPERTY IN ROWAN COUNTY WITHOUT THE CONSENT OF THE ROWAN COUNTY BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 153A-15, the City of Kannapolis may condemn or acquire real property or an interest in real property located in Rowan County without the consent or approval of the Rowan County Board of Commissioners.

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

Attachment # 2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-8-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JACK McGEE	MINERS OF DARE
George P. Lang	NCDOR
Joe Klinger	Sierra Club / CCNC
Mac Boxley	N.C. Aggregates Assoc.
[signature]	Agricultural Alliance of N.C.
R. ROGERS	EHNR
Andy McCALL	DEHNR
Sarah Keller	DEHNR
Don McCorquodale	NCRMA
FRAN PRESTON	NCRMA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-8-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bryce Worth	Senator Reeves
Chris Fitzsimon	Common Sense Foundation
Greg Maddox	Atlanta
Leanne Winner	E&H+S
Samuel Hughes	New Bern NC
Bob Sorrell	NC Forestry Assoc.
Dianne Beasley	NC Forest Service
Michael Thompson	NC Forest Service
Ed Regan	N.C. Assoc. of Co. Comm.
Alice Garland	Electricities
Jeff Mann	North Carolina Railroad Company

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Wednesday, July 09, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**340** Kannapolis Property Acquisitions.
Sequential Referral: None
Recommended Referral: None

H.B.(CS#2)**993** Regional Transportation Authorities.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **1044** County Tax Information Recipient.
Draft Number: PCS7341
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**305** Peanut Assessment Cap.
Draft Number: PCS6298
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment: July 8 meeting HB 305 340 993 1044

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 9, 1997

8:30 A.M. - Room 544 LOB

The Senate Finance Committee met. There were 25 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order.

H. B. 14 Tax on Custom Computer Software

Representative Cansler came to explain the bill. Senator Cochrane moved for a "favorable" report, motion passed.

H. B. 843 - Cedar Rock Incorporated

Representative Starnes came to explain the bill. Senator Kerr moved for adoption of committee substitute, motion passed. Senator Conder sent an amendment to the bill to name Senator Donald Kincaid who is to soon retire from the Senate as Interim Mayor of Cedar Rock until the election for Mayor was held in accordance with this Bill and made a motion for adoption, motion passed. Senator Blust moved for reconsideration of amendment, motion passed. Senator Blust then moved for defeat of amendment, motion passed. Senator McDaniel moved for a "favorable" report of committee substitute, motion passed.

H. B. 457 - Amend Forest Development Act

NOTE: This bill was considered earlier in the meeting and now is being brought back for reconsideration. Senator Kerr moved for adoption of committee substitute, motion passed. Senator Wellons moved for a "favorable" report, motion passed.

S. B. 1001 - Expand Amusement Tax Exemptions

Senator Kinnaird came to explain the bill. Senator Kerr moved for adoption of proposed committee substitute, motion passed. Senator Reeves moved for a "favorable" report, motion passed.

H. B. 1157 - Various State Tax Law Changes

Representation Morris came to explain the bill. Senator Kerr moved for adoption of committee substitute, motion passed. Mrs. Sabra Faires with the Department of Revenue spoke on the bill. Senator Wellons moved for a "favorable" report, motion passed.

H. B. 35 - Conform Sales Tax Refund Period

Representative Capps came to explain the bill. Senator Kerr moved for adoption of a committee substitute to this bill, motion passed. Mrs. Sabra Faires with Department of Revenue spoke on the bill. Senator Foxx moved for a "favorable" report, motion passed.

Senator Hoyle turned the Meeting over to Senator Kerr so that he might explain one of his bills.

S. B. 1073 - IRMC Restructuring-2

Senator Hoyle came to explain the bill and moved for adoption of a proposed committee substitute, motion passed. Mr. Bill Forbes, President of the Auctioneers Association spoke on the Bill. Senator Dannelly moved for a "favorable" report, motion passed.

Senator Kerr stated that we would take S. B. 874 - Resolution of Seed Claims and S. B. 36 - Uniform Tax on Piped Natural Gas both of which were on the Agenda up for consideration at a later meeting. On Senate Bill 36, Mrs. Sabra Faires with the Department of Revenue did speak on the Bill.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report that is date 7-10-97 is Attachment # 3

Attachment #1

AGENDA

FOR

SENATE FINANCE MEETING

WEDNESDAY, JULY 9, 1997

8:30 A.M., ROOM 544

SB 36 - Uniform Tax on Piped Natural Gas - Sen. Kerr

SB 874 - Resolution of Seed Claims - Sen. Kerr

SB 1001 - Expand Amusement Tax Exemptions - Sen. Kinnaird

HB 14 - Tax on Custom Computer Software - Rep. Cansler

HB 35 - Conform Sales Tax Refund Period - Rep. Capps

HB 457 - Amend Forest Development Act - Rep. Weatherly

HB 843 - Cedar Rock Incorporated - Rep. Starnes

HB 1157 - Various State Tax Law Changes - Rep. Morris

SB 1073 - IRMC Restructuring-2 - Sen. Hoyle

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 14
Corrected Copy 2/11/97
Committee Substitute Favorable 6/25/97
Fourth Edition Engrossed 7/2/97

Short Title: Update Custom Computer Software. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SALES TAX DEFINITION OF CUSTOM COMPUTER SOFTWARE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.3(20) reads as rewritten:

"(20) ~~'Tangible personal property' means and includes personal property which~~ Tangible personal property. -- Personal property that may be seen, weighed, measured, ~~felt~~ felt, or touched or is in any other manner perceptible to the senses. The term ~~"tangible personal property" shall~~ does not include stocks, bonds, notes, ~~insurance~~ insurance, or other obligations or securities, nor ~~shall~~ does it include water delivered by or through main lines or pipes either for commercial or domestic use or consumption. The term includes ~~all "canned" or prewritten computer programs, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, held, or existing for general or repeated sale, lease, or license to use or consume. The term does not include the design, development, writing, translation, fabrication, lease, license to use or consume, or transfer for a consideration of title or possession of a custom computer program, other than a basic operational program, either in the form of~~

~~written procedures or in the form of storage media on which or in which the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program. The term also does not include access to a computer program or a database when the user of the computer program or database receives a separately stated fee or other charge for the access.~~

~~As used in this subdivision:~~

~~a. "Basic operational program" or "control program" means a computer program that is fundamental and necessary to the functioning of a computer. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage, input/output devices, and processing programs. A processing program is used to develop and implement the specific applications the computer is to perform.~~

~~b. "Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.~~

~~c. "Custom computer program" means a computer program prepared to the special order of the customer. Custom computer programs include one of the following elements:~~

~~1. Preparation or selection of the programs for the customer's use requires an analysis of the customer's requirements by the vendor; or~~

~~2. The program requires adaptation by the vendor to be used in a particular make and model of computer utilizing a specified output device.~~

~~d. "Storage media" means punched cards, tapes, disks, diskettes, or drums.~~

computer software delivered on a storage medium, such as a cd rom, a disk, or a tape."

Section 2. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(43) Custom computer software. -- 'Custom computer software' is software written in accordance with the specifications of a specific

customer. The term includes a user manual or other documentation that accompanies the sale of the software. The term does not include prewritten software that can be installed and executed with no changes to the software's source code other than changes made to configure hardware or software."

Section 3. This act becomes effective October 1, 1997, and applies to sales made on or after that date.

EXPLANATION OF HOUSE BILL 14:
Update Custom Computer Software (4th Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 7, 1997
SPONSOR: Representative Cansler
Recommendation of the Revenue Laws Study Committee

House Bill 14 modifies the sales tax definition of custom computer software to make a clear distinction between software that is subject to State and local sales and use taxes and software that is not subject to these taxes. The bill reflects an agreement between the sponsor, the Department of Revenue, and the North Carolina Electronic & Information Technologies Association on the definition of custom computer software. The bill becomes effective October 1, 1997.

Under current law, canned software is subject to sales and use taxes and custom software is not subject to these taxes. The North Carolina sales and use tax law excludes custom computer software from tax to implement the policy that computer services are not subject to sales and use taxes. The cost for custom computer programs is attributable to the programming services provided rather than the cost of producing a tangible form of the program on a cd rom or tape. The current definition of custom software is very broad, however, and can include off-the counter "shrink-wrap" programs and programs that have been modified only slightly by the vendor.

Under the current definition, custom computer software includes all software recommended to the purchaser by the seller after performing an analysis of the purchaser's needs. Thus, under this definition, a common product such as Microsoft's Word program becomes exempt from sales and use tax if the seller of the program analyzes the customer's needs and decides that Word is better for the customer than WordPerfect or another competing product. The bill deletes an analysis of a customer's needs as a determining factor in whether a program is custom (exempt) or canned (taxable).

The current definition of custom software also includes all programs adapted by the seller of the program to be used in a particular computer and its associated input/output devices such as printers. This type of adaptation can be slight, such as the completion of a "fill-in-the-blank" series in which the particular hardware to be used with the program is designated, or it can require extensive changes to the lines of code in the software. Under the current definition, any slight modification of a program makes the entire program exempt from State and local sales and use taxes. The bill changes current law by providing that prewritten software that can be installed and executed with no changes to the software's source code other than changes made to configure hardware or software.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 14 (House Finance Committee Sub.)

SHORT TITLE: Update Custom Computer Software

SPONSOR(S): Rep. Cansler

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
General Fund	$512,000	$738,000	$799,000	$865,000	$935,000
Local Govts.	$256,000	$369,000	$400,000	$432,000	$468,000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Local Governments

EFFECTIVE DATE: October 1, 1997

BILL SUMMARY: The act redefines custom computer software for sales tax purposes as software written according to the specifications of a specific customer. Custom software is not "prewritten software that can be installed and executed with no changes to the software's source code other than changes made to configure hardware or software or to select personal preferences".

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue has no data on canned versus custom software, because it collects sales tax data by type of business and not by type of commodity. The Software Publishers Association reported retail software sales of $10.6 billion in the US and Canada in 1996. If North Carolina's share of the software sales equals its population share of the US and Canada (2.5%), then North Carolina retail software sales in 1996 were $265 million. The Software Publishers Association reported software sales for 1995 and 1996 grew 8.2% each year. This inflation rate is used in this fiscal note for the next five years.

The Tax Research Division in the Department of Revenue believes the state is losing sales tax on 3% to 8% of retail software sales because of the ambiguous custom software language now in the

statutes. In other words, by clarifying the definition of custom software in HB 14, the Department of Revenue projects the annual revenue gain to the state and local governments will equal the sales tax on 3% to 8% of software sales. To simplify the estimation of the revenue gain, this fiscal note uses 5.5% or the midpoint of the Department of Revenue's estimate.

	($ Millions)						
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02
	265.00	286.73	310.24	335.68	363.21	392.99	425.22
5.5% of sales			17.06	18.46	19.98	21.61	23.39
4% State tax			0.683	0.738	0.799	0.865	0.935
2% Local tax			0.341	0.369	0.400	0.432	0.468

FY 1997-98 tax revenues will be 75% of the total shown due to an October 1 effective date.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington
DATE: June 24, 1997

How the States Tax Sales of Computers and Computer Software

¶ 60-160

Generally, computer hardware is taxable with certain exceptions for computers used in manufacturing, production, research, etc. Similar exceptions may exist for software that would otherwise be taxable.

The methods by which the states apply their sales and use taxes to sales of computer software vary greatly. Generally, most states impose their sales taxes on transfers of tangible personal property, but computer software is not easily classified as "tangible" or "intangible" because the value of the information contained on the software must be balanced against the value of the tangible tapes, discs, punchcards, etc., used to transfer the information. Many states, through case law, determine the classification of software by utilizing the "true object" test. If the "true object" of the transaction is to obtain tangible personal property, the software will be taxable; if the "true object" of the transaction is to obtain a service, the software will not be taxable.

Many states distinguish between "canned" or "prewritten" software, which can be purchased off the shelf and used in a customer's computer without any modification, and "custom" software, which is generally a program created to meet a specific customer's needs . In some states, a canned program modified to meet a particular customer's needs qualifies as a nontaxable custom program. Definitions of "custom" programs vary widely among the states.

For purposes of this chart, "T" stands for taxable and "E" stands for exempt, but the designations are of a general nature and exceptions unnoted in the chart may exist.

State	Canned Programs	Custom Programs	Modified Canned Programs	Computer Hardware
Alabama	E [2]	E	E	T
Arizona	T	E	E	T
Arkansas	T	T	T	T
California	T	E	E [1]	T
Colorado	T	E	E	T
Connecticut	T	T	T	T
District of Columbia	T	T	T	T
Florida	T	E	E	T
Georgia	T	E	T	T
Hawaii	T	T	T	T
Idaho	T	E	E [1]	T
Illinois	T	E	E	T
Indiana	T	E	T	T
Iowa	T	E	E [1]	T
Kansas	T	E	E [1]	T
Kentucky	T	E	E	T
Louisiana	T	T	T	T
Maine	T	T	T	T

[1] If charges for modification are separately stated.

[2] "Firmware", i.e. special purchase memory units attached to a computer that becomes an integral part of the electronic circuitry (such as game cartridges) are taxable.

State	Canned Programs	Custom Programs	Modified Canned Programs	Computer Hardware
Maryland	T	E	E [3]	T
Massachusetts	T	E	E [4]	T
Michigan	T	E	E	T
Minnesota	T	E	E [1]	T
Mississippi	T	T	T	T
Missouri	T	E	T	T
Nebraska	T	T	T	T
Nevada	T	E	E [1]	T
New Jersey	T	E	E	T
New Mexico	T	T	T	T
New York	T	E	E [1]	T
North Carolina	T	E	E	T
North Dakota	T	E	E [1]	T
Ohio	T	T	T	T
Oklahoma	T	E	T	T
Pennsylvania	T	T	T	T
Rhode Island	T	E	T	T
South Carolina	T	T	T	T
South Dakota	T	T	T	T
Tennessee	T	T	T	T
Texas	T	T	T	T
Utah	T	E	E [1]	T
Vermont	T	E	E	T
Virginia	T	E	E [1]	T
Washington	T	E	T	T
West Virginia	T	T	T	T
Wisconsin	T	E	E	T
Wyoming	T	E	T	T

[The next page is 8401.]

[3] If software incorporates significant creative input and the service predominates over the sale of the software.

[4] If charges for modification are separately stated or, if not separately stated, the sales price of the canned software is an inconsequential element of the cost of the transaction.

[1] If charges for modification are separately stated.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 843
Committee Substitute Favorable 4/16/97

Short Title: Cedar Rock Incorporation. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF CEDAR ROCK SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Cedar Rock is enacted to read:

"CHARTER OF THE TOWN OF CEDAR ROCK.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Cedar Rock are a body corporate and politic under the name 'Town of Cedar Rock'. Under that name they shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"Section 1.2. **Map.** An official map of the Town, showing the current boundaries, is maintained permanently in the office of the Town Clerk and is available for public inspection. A true copy of the official map shall be filed in the office of the Caldwell County Register of Deeds.

"CHAPTER II.

"TOWN BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Cedar Rock are as follows:

BEGINNING on an existing 3/4 inch iron pipe, said BEGINNING POINT being located South 37 degrees 40 minutes 46 seconds West 4,373.01 feet from the N.C.G.S. Control Monument 'Blue Creek', and said BEGINNING POINT having the North

Carolina Grid Coordinates of North 810,320.99 feet, East 1,273,413.09 feet; thence from the POINT OF BEGINNING and with the outside boundary of 'Cedar Rock Estates' for the following calls: North 70 degrees 50 minutes 38 seconds East 238.03 feet to an existing 5/8 inch iron pipe; South 18 degrees 14 minutes 17 seconds East 156.97 feet to an existing 4 inch iron pipe in concrete; North 88 degrees 41 minutes 16 seconds East 623.03 feet to an existing 1 inch iron pipe; South 87 degrees 29 minutes 50 seconds East 627.56 feet to an existing 1/2 inch iron pipe; South 03 degrees 43 minutes 52 seconds West 1,826.93 feet to the center of a 14 inch hickory tree; North 54 degrees 38 minutes 11 seconds East 522.13 feet to an existing 1/2 inch iron pipe; South 51 degrees 00 minutes 49 seconds East 106.79 feet to an existing 1/2 inch iron pipe; South 50 degrees 30 minutes 06 seconds East 231.20 feet to an existing 1/2 inch iron pipe; South 31 degrees 16 minutes 23 seconds East 68.60 feet to an existing 1/2 inch iron pipe; South 00 degrees 15 minutes 16 seconds West 138.85 feet to an existing 1/2 inch iron pipe; South 09 degrees 24 minutes 41 seconds East 107.32 feet to an existing 1/2 inch iron pipe; South 43 degrees 30 minutes 17 seconds West 69.03 feet; South 02 degrees 15 minutes 30 seconds East 40.92 feet to an existing 1/2 inch iron pipe; South 02 degrees 40 minutes 26 seconds West 30.00 feet; South 87 degrees 23 minutes 34 seconds East 66.97 feet to a point of curve, with a curve concave to the southwest having a radius of 150.00 feet, an arc of 37.68 feet, and a chord of South 80 degrees 11 minutes 47 seconds East 37.58 feet to a point of tangency; South 73 degrees 00 minutes 00 seconds East 176.96 feet to a point of curve, with a curve concave to the northwest having a radius of 150.00, an arc of 92.48 feet , and a chord of North 89 degrees 20 minutes 14 seconds East 91.02 feet; North 71 degrees 40 minutes 28 seconds East 218.47 feet; South 09 degrees 06 minutes 50 seconds East 92.61 feet to a point of curve, with a curve concave to the southwest having a radius of 70.00 feet, an arc of 102.26 feet, and a chord of North 61 degrees 10 minutes 06 seconds West 93.41 feet to a point of tangency; South 77 degrees 00 minutes 00 seconds West 135.17 feet; South 61 degrees 32 minutes 06 seconds West 210.35 feet to a new 1/2 iron rod in the center of a branch; thence with the branch for the following calls: North 63 degrees 01 minutes 53 seconds West 19.38 feet; North 84 degrees 52 minutes 56 seconds West 37.74 feet; South 53 degrees 44 minutes 43 seconds West 13.37 feet; South 81 degrees 12 minutes 54 seconds West 31.74 feet; South 51 degrees 07 minutes 19 seconds West 33.65 feet; South 63 degrees 58 minutes 59 seconds West 43.73 feet; North 88 degrees 07 minutes 22 seconds West 42.99 feet; South 44 degrees 55 minutes 55 seconds West 17.93 feet; South 69 degrees 07 minutes 25 seconds West 68.67 feet; North 86 degrees 52 minutes 52 seconds West 19.07 feet; South 60 degrees 37 minutes 00 seconds West 52.83 feet; South 37 degrees 58 minutes 33 seconds West 67.68 feet to a new 1/2 inch iron rod; North 71 degrees 54 minutes 38 seconds West 47.90 feet; North 87 degrees 51 minutes 11 seconds West 40.94 feet; South 65 degrees 28 minutes 08 seconds West 88.14 feet; North 76 degrees 32 minutes 31 seconds West 24.52 feet; South 25 degrees 04 minutes 23 seconds West 55.61 feet; South 38 degrees 00 minutes 34 seconds West 33.32 feet; South 52 degrees 06 minutes 23 seconds West 81.97 feet; South 50 degrees 29 minutes 02 seconds West 51.95 feet to a new 1/2 inch iron pipe in the branch; South 55 degrees 08 minutes 07

seconds East 61.08 feet; South 34 degrees 28 minutes 26 seconds East 86.12 feet; South 35 degrees 27 minutes 16 seconds East 77.74 feet; South 32 degrees 46 minutes 52 seconds East 67.55 feet; South 23 degrees 50 minutes 35 seconds East 63.51 feet; South 11 degrees 50 minutes 57 seconds East 67.12 feet; South 06 degrees 16 minutes 22 seconds East 68.09 feet; South 07 degrees 07 minutes 21 seconds West 107.78 feet to the forks of the branch; thence continuing with a branch South 12 degrees 51 minutes 27 seconds East 48.43 feet to a new 1/2 inch iron rod; thence leaving the branch South 51 degrees 07 minutes 11 seconds East 271.59 feet to a new 1/2 inch iron rod; thence South 04 degrees 44 minutes 20 seconds West 200.00 feet to a new 1/2 inch iron rod; thence North 90 degrees 00 minutes 00 seconds East 198.45 feet to a new 1/2 inch iron rod at a point of curve; thence with a curve concave to the northeast having a radius of 50.00 feet, an arc of 117.81 feet, and a chord of South 86 degrees 20 minutes 25 seconds East 92.39 feet to a new 1/2 inch iron rod at a point of compound curve; thence with a curve concave to the northwest having a radius of 277.50 feet, an arc of 212.40 feet, and a chord of South 03 degrees 05 minutes 05 seconds West 207.25 feet to a new 1/2 inch iron rod at a point of tangency; thence South 25 degrees 01 minutes 11 seconds West 91.90 feet to a new 1/2 inch iron rod at a point of curve; thence with a curve concave to the southeast having a radius of 127.50 feet, an arc of 37.92 feet and a chord of South 18 degrees 25 minutes 19 seconds West 37.38 feet to a point of tangency; thence South 09 degrees 54 minutes 09 seconds West 95.67 feet to a point of curve; thence with a curve concave to the southeast having a radius of 188.59 feet, an arc of 39.36 feet, and a chord of South 69 degrees 30 minutes 08 seconds West 39.29 feet to a point of compound curve; thence with a curve concave to the southeast having a radius of 356.12 feet, an arc of 253.57 feet, and a chord of South 28 degrees 45 minutes 22 seconds West 248.25 feet to a point of tangency; thence South 08 degrees 21 minutes 27 seconds West 153.29 feet to a point of curve; thence with a curve concave to the northwest having a radius of 155.00 feet, an arc of 135.15 feet, and a chord of South 33 degrees 20 minutes 15 seconds West 130.91 feet; thence North 85 degrees 46 minutes 03 seconds West 928.26 feet to an existing 1/2 inch iron pipe; thence North 85 degrees 46 minutes 03 seconds West 300.00 feet to a new 1/2 inch iron rod; thence South 09 degrees 26 minutes 57 seconds West 1,072.65 feet to a new 1/2 inch iron rod; thence North 84 degrees 52 minutes 23 seconds West 706.50 feet to a new 3/4 inch iron point on top of a ridge; thence South 68 degrees 43 minutes 00 seconds West 648.42 feet to a new 3/4 inch iron pipe at a branch; thence South 30 degrees 04 minutes 47 seconds West 990.00 feet to a P.K. Nail set in an X marked on a large rock; thence South 38 degrees 45 minutes 00 seconds West 577.50 feet; thence South 07 degrees 45 minutes 00 seconds West 1,320.00 feet; thence North 22 degrees 00 minutes 00 seconds West 1,815.00 feet; thence North 32 degrees 30 minutes 00 seconds West 369.60 feet; thence North 58 degrees 45 minutes 00 seconds West 297.00 feet; thence North 20 degrees 30 minutes 00 seconds West 1,690.90 feet; thence North 17 degrees 00 minutes 00 seconds West 957.00 feet; thence North 05 degrees 00 minutes 00 seconds West 115.40 feet; thence North 75 degrees 32 minutes 00 seconds West 51.81 feet; thence North 00 degrees 51 minutes 00 seconds West 313.40 feet; thence North 68 degrees 10 minutes 00 seconds

East 53.55 feet; thence North 00 degrees 30 minutes 00 seconds East 272.50 feet; thence North 24 degrees 00 minutes 00 seconds East 396.00 feet; thence North 29 degrees 30 minutes 00 seconds East 396.00 feet; thence North 40 degrees 00 minutes 00 seconds East 165.00 feet; thence North 38 degrees 23 minutes 00 seconds West 770.00 feet to a point in the center of N.C. Highway #18; thence with the center of the highway for the following calls: North 74 degrees 34 minutes 00 seconds East 1,143.56 feet; North 72 degrees 46 minutes 00 seconds East 280.00 feet; North 71 degrees 19 minutes 00 seconds East 400.00 feet; North 71 degrees 37 minutes 00 seconds East 600.00 feet; North 71 degrees 15 minutes 00 seconds East 700.00 feet; North 60 degrees 25 minutes 00 seconds East 130.00 feet; North 47 degrees 00 minutes 00 seconds East 130.00 feet; North 51 degrees 00 minutes 00 seconds East 130.00 feet; North 61 degrees 00 minutes 00 seconds East 130.00 feet; North 67 degrees 30 minutes 00 seconds East 130.00 feet; North 74 degrees 20 minutes 00 seconds East 180.00 feet to a point in the center of the road; thence leaving the road South 42 degrees 30 minutes 00 seconds East 120.00 feet to a point in the center of Lower Creek; thence with the center of Lower Creek for four calls: North 63 degrees 32 minutes 00 seconds East 136.00 feet; North 73 degrees 39 minutes 00 seconds East 140.00 feet; North 56 degrees 15 minutes 00 seconds East 73.00 feet; North 88 degrees 19 minutes 00 seconds East 137.00 feet; thence North 11 degrees 05 minutes 00 seconds East, leaving the creek 145.93 feet; thence South 18 degrees 30 minutes 00 seconds East 254.28 feet; thence South 18 degrees 43 minutes 00 seconds West 395.30 feet; thence South 69 degrees 08 minutes 52 seconds West 66.71 feet; thence South 61 degrees 28 minutes 34 seconds East 305.43 feet to an existing 3/4 inch iron pipe; thence North 70 degrees 40 minutes 49 seconds East 70.00 feet to the POINT OF BEGINNING containing 731.94 acres plus or minus.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Numbers of Members.** The Council shall be composed of five members to be elected by all the qualified voters of the Town for terms of four years, or until their successors are elected and qualified.

"Section 3.2. **Mayor-Council Plan.** The Town of Cedar Rock shall operate under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 3.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by the Council from among its membership to serve for a term of four years. The Mayor shall be the official head of the Town government and shall preside at meetings of the Council and shall have the right to vote on all matters before the Council.

"Section 3.4. **Meetings.** In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 3.5. **Quorum; Voting Requirements.** Official actions of the Council and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 4.2. **Election of Council Members.** Elections shall be conducted by the Caldwell County Board of Elections, unless otherwise provided in accordance with G.S. 163-285. In 1997, the three persons who receive the highest number of votes shall serve four-year terms, and the two persons receiving the next highest number of votes shall serve two-year terms. The terms will continue to be staggered, with ensuing council members being elected for four-year terms.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"Section 4.4. **Special Filing Period.** The Caldwell County Board of Elections shall establish a special candidate filing period for the 1997 municipal elections."

Section 2. The provisions of G.S. 160A-63 shall not apply to the Town of Cedar Rock until after the first election of the Town Council.

Section 3. From and after the effective date of this act, the citizens and property in the Town of Cedar Rock shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain from Caldwell County a record of property in the area herein incorporated that was listed for taxes as of January 1, 1997, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act.

Section 4. The Caldwell County Board of Elections shall conduct an election on a date set by the Board, to be not less than 60 nor more than 120 days after this act becomes law, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Cedar Rock the question of whether or not the area shall be incorporated as the Town of Cedar Rock. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Section 5. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Town of Cedar Rock."

Section 6. In the election, if a majority of the votes are cast "For incorporation of the Town of Cedar Rock", Sections 1 through 3 of this act shall become effective on the date that the Caldwell County Board of Elections certifies the results of the election. Otherwise, those sections shall have no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 843
Committee Substitute Favorable 4/16/97
Proposed Senate Committee Substitute H843-PCS6297

Short Title: Cedar Rock Incorporation. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF CEDAR ROCK SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Cedar Rock is enacted to read:

"CHARTER OF THE TOWN OF CEDAR ROCK.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Cedar Rock are a body corporate and politic under the name 'Town of Cedar Rock'. Under that name they shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"Section 1.2. **Map.** An official map of the Town, showing the current boundaries, is maintained permanently in the office of the Town Clerk and is available for public inspection. A true copy of the official map shall be filed in the office of the Caldwell County Register of Deeds.

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"TOWN BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Cedar Rock are as follows:

BEGINNING on an existing 3/4 inch iron pipe, said BEGINNING POINT being located South 37 degrees 40 minutes 46 seconds West 4,373.01 feet from the N.C.G.S.

Control Monument 'Blue Creek', and said BEGINNING POINT having the North Carolina Grid Coordinates of North 810,320.99 feet, East 1,273,413.09 feet; thence from the POINT OF BEGINNING and with the outside boundary of 'Cedar Rock Estates' for the following calls: North 70 degrees 50 minutes 38 seconds East 238.03 feet to an existing 5/8 inch iron pipe; South 18 degrees 14 minutes 17 seconds East 156.97 feet to an existing 4 inch iron pipe in concrete; North 88 degrees 41 minutes 16 seconds East 623.03 feet to an existing 1 inch iron pipe; South 87 degrees 29 minutes 50 seconds East 627.56 feet to an existing 1/2 inch iron pipe; South 03 degrees 43 minutes 52 seconds West 1,826.93 feet to the center of a 14 inch hickory tree; North 54 degrees 38 minutes 11 seconds East 522.13 feet to an existing 1/2 inch iron pipe; South 51 degrees 00 minutes 49 seconds East 106.79 feet to an existing 1/2 inch iron pipe; South 50 degrees 30 minutes 06 seconds East 231.20 feet to an existing 1/2 inch iron pipe; South 31 degrees 16 minutes 23 seconds East 68.60 feet to an existing 1/2 inch iron pipe; South 00 degrees 15 minutes 16 seconds West 138.85 feet to an existing 1/2 inch iron pipe; South 09 degrees 24 minutes 41 seconds East 107.32 feet to an existing 1/2 inch iron pipe; South 43 degrees 30 minutes 17 seconds West 69.03 feet; South 02 degrees 15 minutes 30 seconds East 40.92 feet to an existing 1/2 inch iron pipe; South 02 degrees 40 minutes 26 seconds West 30.00 feet; South 87 degrees 23 minutes 34 seconds East 66.97 feet to a point of curve, with a curve concave to the southwest having a radius of 150.00 feet, an arc of 37.68 feet, and a chord of South 80 degrees 11 minutes 47 seconds East 37.58 feet to a point of tangency; South 73 degrees 00 minutes 00 seconds East 176.96 feet to a point of curve, with a curve concave to the northwest having a radius of 150.00, an arc of 92.48 feet , and a chord of North 89 degrees 20 minutes 14 seconds East 91.02 feet; North 71 degrees 40 minutes 28 seconds East 218.47 feet; South 09 degrees 06 minutes 50 seconds East 92.61 feet to a point of curve, with a curve concave to the southwest having a radius of 70.00 feet, an arc of 102.26 feet, and a chord of North 61 degrees 10 minutes 06 seconds West 93.41 feet to a point of tangency; South 77 degrees 00 minutes 00 seconds West 135.17 feet; South 61 degrees 32 minutes 06 seconds West 210.35 feet to a new 1/2 iron rod in the center of a branch; thence with the branch for the following calls: North 63 degrees 01 minutes 53 seconds West 19.38 feet; North 84 degrees 52 minutes 56 seconds West 37.74 feet; South 53 degrees 44 minutes 43 seconds West 13.37 feet; South 81 degrees 12 minutes 54 seconds West 31.74 feet; South 51 degrees 07 minutes 19 seconds West 33.65 feet; South 63 degrees 58 minutes 59 seconds West 43.73 feet; North 88 degrees 07 minutes 22 seconds West 42.99 feet; South 44 degrees 55 minutes 55 seconds West 17.93 feet; South 69 degrees 07 minutes 25 seconds West 68.67 feet; North 86 degrees 52 minutes 52 seconds West 19.07 feet; South 60 degrees 37 minutes 00 seconds West 52.83 feet; South 37 degrees 58 minutes 33 seconds West 67.68 feet to a new 1/2 inch iron rod; North 71 degrees 54 minutes 38 seconds West 47.90 feet; North 87 degrees 51 minutes 11 seconds West 40.94 feet; South 65 degrees 28 minutes 08 seconds West 88.14 feet; North 76 degrees 32 minutes 31 seconds West 24.52 feet; South 25 degrees 04 minutes 23 seconds West 55.61 feet; South 38 degrees 00 minutes 34 seconds West 33.32 feet; South 52 degrees 06 minutes 23 seconds West 81.97 feet; South 50 degrees 29 minutes 02 seconds West

51.95 feet to a new 1/2 inch iron pipe in the branch; South 55 degrees 08 minutes 07 seconds East 61.08 feet; South 34 degrees 28 minutes 26 seconds East 86.12 feet; South 35 degrees 27 minutes 16 seconds East 77.74 feet; South 32 degrees 46 minutes 52 seconds East 67.55 feet; South 23 degrees 50 minutes 35 seconds East 63.51 feet; South 11 degrees 50 minutes 57 seconds East 67.12 feet; South 06 degrees 16 minutes 22 seconds East 68.09 feet; South 07 degrees 07 minutes 21 seconds West 107.78 feet to the forks of the branch; thence continuing with a branch South 12 degrees 51 minutes 27 seconds East 48.43 feet to a new 1/2 inch iron rod; thence leaving the branch South 51 degrees 07 minutes 11 seconds East 271.59 feet to a new 1/2 inch iron rod; thence South 04 degrees 44 minutes 20 seconds West 200.00 feet to a new 1/2 inch iron rod; thence North 90 degrees 00 minutes 00 seconds East 198.45 feet to a new 1/2 inch iron rod at a point of curve; thence with a curve concave to the northeast having a radius of 50.00 feet, an arc of 117.81 feet, and a chord of South 86 degrees 20 minutes 25 seconds East 92.39 feet to a new 1/2 inch iron rod at a point of compound curve; thence with a curve concave to the northwest having a radius of 277.50 feet, an arc of 212.40 feet, and a chord of South 03 degrees 05 minutes 05 seconds West 207.25 feet to a new 1/2 inch iron rod at a point of tangency; thence South 25 degrees 01 minutes 11 seconds West 91.90 feet to a new 1/2 inch iron rod at a point of curve; thence with a curve concave to the southeast having a radius of 127.50 feet, an arc of 37.92 feet and a chord of South 18 degrees 25 minutes 19 seconds West 37.38 feet to a point of tangency; thence South 09 degrees 54 minutes 09 seconds West 95.67 feet to a point of curve; thence with a curve concave to the southeast having a radius of 188.59 feet, an arc of 39.36 feet, and a chord of South 69 degrees 30 minutes 08 seconds West 39.29 feet to a point of compound curve; thence with a curve concave to the southeast having a radius of 356.12 feet, an arc of 253.57 feet, and a chord of South 28 degrees 45 minutes 22 seconds West 248.25 feet to a point of tangency; thence South 08 degrees 21 minutes 27 seconds West 153.29 feet to a point of curve; thence with a curve concave to the northwest having a radius of 155.00 feet, an arc of 135.15 feet, and a chord of South 33 degrees 20 minutes 15 seconds West 130.91 feet; thence North 85 degrees 46 minutes 03 seconds West 928.26 feet to an existing 1/2 inch iron pipe; thence North 85 degrees 46 minutes 03 seconds West 300.00 feet to a new 1/2 inch iron rod; thence South 09 degrees 26 minutes 57 seconds West 1,072.65 feet to a new 1/2 inch iron rod; thence North 84 degrees 52 minutes 23 seconds West 706.50 feet to a new 3/4 inch iron point on top of a ridge; thence South 68 degrees 43 minutes 00 seconds West 648.42 feet to a new 3/4 inch iron pipe at a branch; thence South 30 degrees 04 minutes 47 seconds West 990.00 feet to a P.K. Nail set in an X marked on a large rock; thence South 38 degrees 45 minutes 00 seconds West 577.50 feet; thence South 07 degrees 45 minutes 00 seconds West 1,320.00 feet; thence North 22 degrees 00 minutes 00 seconds West 1,815.00 feet; thence North 32 degrees 30 minutes 00 seconds West 369.60 feet; thence North 58 degrees 45 minutes 00 seconds West 297.00 feet; thence North 20 degrees 30 minutes 00 seconds West 1,690.90 feet; thence North 17 degrees 00 minutes 00 seconds West 957.00 feet; thence North 05 degrees 00 minutes 00 seconds West 115.40 feet; thence North 75 degrees 32 minutes 00 seconds West 51.81 feet; thence North 00 degrees 51

minutes 00 seconds West 313.40 feet; thence North 68 degrees 10 minutes 00 seconds East 53.55 feet; thence North 00 degrees 30 minutes 00 seconds East 272.50 feet; thence North 24 degrees 00 minutes 00 seconds East 396.00 feet; thence North 29 degrees 30 minutes 00 seconds East 396.00 feet; thence North 40 degrees 00 minutes 00 seconds East 165.00 feet; thence North 38 degrees 23 minutes 00 seconds West 770.00 feet to a point in the center of N.C. Highway #18; thence with the center of the highway for the following calls: North 74 degrees 34 minutes 00 seconds East 1,143.56 feet; North 72 degrees 46 minutes 00 seconds East 280.00 feet; North 71 degrees 19 minutes 00 seconds East 400.00 feet; North 71 degrees 37 minutes 00 seconds East 600.00 feet; North 71 degrees 15 minutes 00 seconds East 700.00 feet; North 60 degrees 25 minutes 00 seconds East 130.00 feet; North 47 degrees 00 minutes 00 seconds East 130.00 feet; North 51 degrees 00 minutes 00 seconds East 130.00 feet; North 61 degrees 00 minutes 00 seconds East 130.00 feet; North 67 degrees 30 minutes 00 seconds East 130.00 feet; North 74 degrees 20 minutes 00 seconds East 180.00 feet to a point in the center of the road; thence leaving the road South 42 degrees 30 minutes 00 seconds East 120.00 feet to a point in the center of Lower Creek; thence with the center of Lower Creek for four calls: North 63 degrees 32 minutes 00 seconds East 136.00 feet; North 73 degrees 39 minutes 00 seconds East 140.00 feet; North 56 degrees 15 minutes 00 seconds East 73.00 feet; North 88 degrees 19 minutes 00 seconds East 137.00 feet; thence North 11 degrees 05 minutes 00 seconds East, leaving the creek 145.93 feet; thence South 18 degrees 30 minutes 00 seconds East 254.28 feet; thence South 18 degrees 43 minutes 00 seconds West 395.30 feet; thence South 69 degrees 08 minutes 52 seconds West 66.71 feet; thence South 61 degrees 28 minutes 34 seconds East 305.43 feet to an existing 3/4 inch iron pipe; thence North 70 degrees 40 minutes 49 seconds East 70.00 feet to the POINT OF BEGINNING containing 731.94 acres plus or minus.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Numbers of Members.** The Council shall be composed of five members to be elected by all the qualified voters of the Town for terms of four years, or until their successors are elected and qualified.

"Section 3.2. **Mayor-Council Plan.** The Town of Cedar Rock shall operate under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 3.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of four years. The Mayor shall be the official head of the Town government and shall preside at meetings of the Council and shall have the right to vote on all matters before the Council.

"Section 3.4. **Meetings.** In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 3.5. **Quorum; Voting Requirements.** Official actions of the Council and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"CHAPTER IV.
"ELECTIONS.

"Section 4.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 4.2. **Election of Council Members.** Elections shall be conducted by the Caldwell County Board of Elections, unless otherwise provided in accordance with G.S. 163-285. In 1997, the three persons who receive the highest number of votes shall serve four-year terms, and the two persons receiving the next highest number of votes shall serve two-year terms. The terms will continue to be staggered, with ensuing council members being elected for four-year terms.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"Section 4.4. **Special Filing Period.** The Caldwell County Board of Elections shall establish a special candidate filing period for the 1997 municipal elections."

Section 2. The provisions of G.S. 160A-63 shall not apply to the Town of Cedar Rock until after the first election of the Town Council.

Section 3. From and after the effective date of this act, the citizens and property in the Town of Cedar Rock shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain from Caldwell County a record of property in the area herein incorporated that was listed for taxes as of January 1, 1997, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act.

Section 4. The Caldwell County Board of Elections shall conduct an election on a date set by the Board, to be not less than 60 nor more than 120 days after this act becomes law, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Cedar Rock the question of whether or not the area shall be incorporated as the Town of Cedar Rock. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Section 5. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST
Incorporation of the Town of Cedar Rock."

Section 6. In the election, if a majority of the votes are cast "For incorporation of the Town of Cedar Rock", Sections 1 through 3 of this act shall become effective on the date that the Caldwell County Board of Elections certifies the results of the election. Otherwise, those sections shall have no force and effect.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS6297

H. B. No. 843 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Corder
Sen.)

moves to amend the bill on page 5, line ~~42~~ 28+29

( ) WHICH CHANGES THE TITLE

by inserting between the lines a new section to read:

"Section ~~3~~ 3.1. The interim mayor for the Town of Cedar Rock will be Donald Kincaid until the election for mayor is held in accordance with this act."

SIGNED Corder

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 457
Committee Substitute Favorable 4/2/97

Short Title: Amend Forest Development Act/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW RECOVERY OF FUNDS PAID AS FOREST DEVELOPMENT COST-SHARING PAYMENTS WHEN TREES ARE NOT MAINTAINED AT LEAST TEN YEARS AND TO CONVERT THE FOREST DEVELOPMENT FUND TO ONE THAT ACCRUES INTEREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-178 reads as rewritten:

"**§ 113A-178. Definitions.**

As used in this Article:

(1) 'Approved forest management plan' ~~shall mean~~ means the forest management plan submitted by the eligible landowner and approved by the Secretary. Such plan shall include forest management practices to insure both maximum forest productivity and environmental protection of the lands to be treated under the management plan.

(2) 'Approved practices' ~~shall mean~~ mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, or of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature timber. Such practices shall include those required to accomplish site preparation, natural and artificial forestation, noncommercial removal of residual stands for silvicultural purposes, and

cultivation of established young growth of desirable trees. In each case, approved practices will be determined by the needs of the individual forest stand. These practices shall include existing practices and such practices as are developed in the future to insure both maximum forest productivity and environmental protection.

(3) 'Department' ~~shall mean~~ means the Department of Environment, Health, and Natural Resources.

(4) 'Eligible landowner' ~~shall mean~~ means a private individual, group, association or corporation owning land suitable for forestry purposes. Where forest land is owned jointly by more than one individual, group, association or corporation, as tenants in common, tenants by the entirety, or otherwise, the joint owners shall be considered, for the purpose of this Article, as one eligible landowner and entitled to receive cost-sharing payments as provided herein only once during each fiscal year.

(5) 'Eligible ~~lands' shall mean~~ land' means land owned by an eligible landowner.

(6) 'Forest development assessment' ~~shall mean~~ means an assessment on primary forest products from timber severed in North Carolina for the funding of the provisions of this Article, as authorized by the General Assembly.

(7) 'Forest development ~~cost-sharing~~ cost-sharing payment' ~~shall mean~~ means financial assistance to partially cover the costs of implementing approved practices in such amounts as the Secretary shall determine, subject to the limitations of this Article.

(8) 'Forest development fund' ~~shall mean~~ means the special nonlapsing fund established in the Department of Environment, Health, and Natural Resources, designated as the Forest Development Fund, created by G.S. 113A-183.

(9) 'Secretary' ~~shall mean~~ means the Secretary of Environment, Health, and Natural Resources.

(10) 'Maintain' means to make every reasonable effort to protect the reforested area from destructive fire and grazing, insects, disease, noxious weeds, and being cleared or partially cleared of trees for any purpose other than as provided in an approved forest management plan."

Section 2. Article 11 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-180.1. Cost-share agreements.**

(a) In order to receive forest development cost-share payments, an eligible landowner shall enter into a written agreement with the Department describing the eligible land, setting forth the approved practices implemented for the area and

covered by the approved forest management plan, and agreeing to maintain those practices for a 10-year period.

(b) A landowner who fails to maintain the practice or practices for a 10-year period in accordance with the agreement set forth in subsection (a) of this section shall repay to the Fund all cost-sharing funds received for that area.

(c) If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner shall:

(1) Obtain a written statement from the new owner or transferee in which the new owner or transferee agrees to maintain the approved practices for the remainder of the 10-year period; or

(2) Repay to the Fund all cost-sharing funds received for implementing the approved practices on the land.

If a written statement is obtained from the new owner or transferee, the original landowner will no longer be responsible for maintaining the approved practices or repaying the cost-sharing funds. The responsibility for maintaining those practices for the remainder of the 10 years shall devolve to the new owner or transferee."

Section 3. G.S. 113A-183 reads as rewritten:

"**§ 113A-183. Forest Development Fund.**

(a) ~~There is hereby~~ The Forest Development Fund is created in the Department of Environment, Health, and Natural Resources as a nonreverting ~~fund to be designated the Forest Development Fund;~~ fund, for which fiscal management and responsibility are ~~hereby~~ vested in the Secretary. The Fund is a special trust fund, and the State Treasurer shall credit interest to the Fund.

(b) This ~~fund~~ Fund shall be the depository for all revenue derived from the forest development assessment on primary forest product processors as authorized by the General Assembly, ~~and~~ for any funds appropriated specifically for the forest development program from the ~~general fund.~~ General Fund, for monetary contribution and donations, and for accrued interest. ~~Those funds appropriated from the general fund remaining in the Forest Development Fund at the end of any fiscal year shall revert to the general fund, but revenues~~ Revenues derived from the forest development assessment ~~shall not revert but~~ shall remain in the Forest Development Fund until expended under the provisions of this Article.

~~(c) In any fiscal year, expenditures from the Forest Development Fund shall be limited to four times the amount of the general fund appropriation for that year.~~

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Processor Assessment Act shall be used for program support under the provisions of G.S. 113A-179(c).

(e) Funds used for the purchase of equipment under the provisions of G.S. 113A-179(d) shall be limited to appropriations from the ~~general fund~~ General Fund to the Forest Development Fund designated specifically for equipment purchase."

Section 4. This act becomes effective June 30, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 457
Committee Substitute Favorable 4/2/97
Proposed Senate Committee Substitute H457-PCSA405

Short Title: Amend Forest Development Act/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW RECOVERY OF FUNDS PAID AS FOREST DEVELOPMENT COST-SHARING PAYMENTS WHEN TREES ARE NOT MAINTAINED AT LEAST TEN YEARS AND TO CONVERT THE FOREST DEVELOPMENT FUND TO ONE THAT ACCRUES INTEREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-178 reads as rewritten:

"**§ 113A-178. Definitions.**

As used in this Article:

(1) 'Approved forest management plan' ~~shall mean~~ means the forest management plan submitted by the eligible landowner and approved by the Secretary. Such plan shall include forest management practices to insure both maximum forest productivity and environmental protection of the lands to be treated under the management plan.

(2) 'Approved practices' ~~shall mean~~ mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, or of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature timber. Such practices shall include those required to accomplish site preparation, natural and artificial forestation, noncommercial

removal of residual stands for silvicultural purposes, and cultivation of established young growth of desirable trees. In each case, approved practices will be determined by the needs of the individual forest stand. These practices shall include existing practices and such practices as are developed in the future to insure both maximum forest productivity and environmental protection.

(3) 'Department' ~~shall mean~~ means the Department of Environment, Health, and Natural Resources.

(4) 'Eligible landowner' ~~shall mean~~ means a private individual, group, association or corporation owning land suitable for forestry purposes. Where forest land is owned jointly by more than one individual, group, association or corporation, as tenants in common, tenants by the entirety, or otherwise, the joint owners shall be considered, for the purpose of this Article, as one eligible landowner and entitled to receive cost-sharing payments as provided herein only once during each fiscal year.

(5) 'Eligible ~~lands' shall mean~~ land' means land owned by an eligible landowner.

(6) 'Forest development assessment' ~~shall mean~~ means an assessment on primary forest products from timber severed in North Carolina for the funding of the provisions of this Article, as authorized by the General Assembly.

(7) 'Forest development ~~cost sharing~~ cost-sharing payment' ~~shall mean~~ means financial assistance to partially cover the costs of implementing approved practices in such amounts as the Secretary shall determine, subject to the limitations of this Article.

(8) 'Forest development fund' ~~shall mean~~ means the ~~special nonlapsing fund established in the Department of Environment, Health, and Natural Resources, designated as the~~ Forest Development ~~Fund,~~ Fund created by G.S. 113A-183.

(9) 'Secretary' ~~shall mean~~ means the Secretary of Environment, Health, and Natural Resources.

(10) 'Maintain' means to retain the reforested area as forestland for a 10-year period and to comply with the provisions in the approved forest management plan."

Section 2. Article 11 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-180.1. Cost-share agreements.**

(a) In order to receive forest development cost-share payments, an eligible landowner shall enter into a written agreement with the Department describing the eligible land, setting forth the approved practices implemented for the area and covered by the approved forest management plan, and agreeing to maintain those practices for a 10-year period.

(b) A landowner who fails to maintain the practice or practices for a 10-year period in accordance with the agreement set forth in subsection (a) of this section shall repay to the Fund all cost-sharing funds received for that area.

(c) If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner shall:

(1) Obtain a written statement, or a form approved by the Department, from the new owner or transferee in which the new owner or transferee agrees to maintain the approved practices for the remainder of the 10-year period; or

(2) Repay to the Fund all cost-sharing funds received for implementing the approved practices on the land.

If a written statement is obtained from the new owner or transferee, the original landowner will no longer be responsible for maintaining the approved practices or repaying the cost-sharing funds. The responsibility for maintaining those practices for the remainder of the 10 years shall devolve to the new owner or transferee."

Section 3. G.S. 113A-183 reads as rewritten:

"**§ 113A-183. Forest Development Fund.**

(a) ~~There is hereby~~ The Forest Development Fund is created in the Department of Environment, Health, and Natural Resources as a ~~fund to be designated the Forest Development Fund, for which fiscal management and responsibility are hereby vested in the Secretary.~~ special fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to it. The Fund is created to provide revenue to implement this Article. The Fund consists of the following revenue:

(1) Assessments on primary forest products collected under Article 12 of Chapter 113A of the General Statutes.

(2) General Fund appropriations.

(3) Gifts and grants made to the Fund.

~~(b) This fund shall be the depository for all revenue derived from the forest development assessment on primary forest product processors as authorized by the General Assembly, and for any funds appropriated specifically for the forest development program from the general fund. Those funds appropriated from the general fund remaining in the Forest Development Fund at the end of any fiscal year shall revert to the general fund, but revenues derived from the forest development assessment shall not revert but shall remain in the Forest Development Fund until expended under the provisions of this Article.~~

~~(c) In any fiscal year, expenditures from the Forest Development Fund shall be limited to four times the amount of the general fund appropriation for that year.~~

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Processor Assessment Act ~~shall~~ may be used for program support under the provisions of G.S. 113A-179(c).

(e) Funds used for the purchase of equipment under the provisions of G.S. 113A-179(d) shall be limited to appropriations from the ~~general fund~~ General Fund to the Forest Development Fund designated specifically for equipment purchase."

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

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 457
SHORT TITLE: Amend Forest Development Act
SPONSOR(S): Representative Weatherly

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	Between $195,000 and $260,000 in earned interest annually				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Primary Forest Produce Assessment Act

EFFECTIVE DATE: When it becomes law

BILL SUMMARY:

The proposed act amends General Statute 113A-178 to provide that landowners who do not maintain for ten years the areas and trees for which they have received cost-sharing funds must repay those funds to the Forest Development Fund. The word "maintain" is defined as making every reasonable effort to protect the reforested area from destructive fire and grazing, insects, disease, noxious weeds, and unauthorized clearing of trees. Also amends G.S. 113A-183 to provide that funds in the Forest Development Fund, including funds appropriated from the General Fund, do not revert and that interest on the funds shall be credited to the Forest Development Fund. Also eliminates provision restricting expenditures from Forest Development Fund to four times the amount of General Fund appropriations for that year.

The original bill, replaced by the House Committee Substitute, included a requirement that eligible landowners maintain approved practices for 10 years, and repay cost-sharing funds if they do not. Substitute replaces this requirement with provision for written agreement under which landowner agrees to maintain practices for 10 years and repay funds if they fail to do so. Provides for continuation of approved practices during 10-year period if original landowner relinquishes control or title to land.
Source: Institute of Government Bill Digest

ASSUMPTIONS AND METHODOLOGY:

The fund annually maintains a balance of $3 to $4 million in cost sharing assistance that is obligated for approved projects. (After a project is approved landowners are given one year to begin and one year to complete the project. There are also cases where extensions are granted. Once a project has been approved the amount is designated within the fund and is disbursed when the project is complete.) The current interest rate on short term investments, made by the State Treasurer, is 6.486%. The expected gain in earned interest, based on the stated balance, is between $195,000 and $260,00 annually.
Source: Division of forest Resources; Dept. of Environment, Health, and Natural Resources

FISCAL RESEARCH DIVISION: 733-4910
PREPARED BY: Warren Plonk
APPROVED BY:
DATE: July 7, 1997

EXPLANATION OF HOUSE BILL 457:
Amend Forest Development Act (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 7, 1997
SPONSOR: Representative Weatherly
Agency Bill

House Bill 457 amends the Forest Development Act in three ways:

- It requires a landowner to enter into a written agreement with the Department of Environment, Health, and Natural Resources before the landowner can receive any cost-sharing payments. The landowner must agree to implement approved forestry practices on land suitable for forestry purposes and must agree to maintain those practices for at least 10 years. Under the bill, if a landowner fails to maintain the practices for a 10-year period, the landowner must repay all cost-sharing funds received for that land. If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner may do one of two things: (1) obtain an agreement from the new owner to maintain the approved practices for the remainder of the 10-year period; or (2) repay the cost-sharing payments.
- It makes the Forest Development Fund a non-reverting, interest-bearing account.
- It repeals the expenditure limit on the Fund. Under current law, expenditures from the Fund are limited to four times the amount of the General Fund appropriation that year. This bill repeals this limitation.

The proposed committee substitute clarifies what type of fund the Forest Development Fund is and it amends the effective date. Under the original bill, the act became effective June 30, 1997.

The legislature created the State's first cost-sharing program and the companion forest product assessment in 1977. The Forest Development Program was designed to encourage woodland owners to reforest their land after harvest and to put idle or underproductive land into trees. The program offers cost share assistance to private landowners as an incentive to put and keep forestland in a forest development plan. There is an assessment levied on primary forest products processed from North Carolina timber to provide the major source of funds for this program. The General Assembly also appropriates money for the program. The collection of the assessment is suspended in any fiscal year in

which the General Assembly fails to make General Fund appropriations to the Fund or in which there is carried forward from previous years a balance of unobligated funds in the Fund greater than twice the amount appropriated from the General Fund for that fiscal year.

An eligible landowner may receive forest development cost sharing payments for satisfactorily completing approved forestry practices. The amount of assistance cannot exceed the lesser of 60% of the landowner's actual per acre cost incurred in implementing the approved practices or 60% of the prevailing per acre cost as determined by the Secretary. In 1995, it was estimated that 561,000 acres had been planted through the program. Since the program began, instances of willful destruction and neglect of trees for which cost-sharing payments have been received are increasing. The investment sought to encourage is lost when the planted trees are not brought full cycle to commercial harvest. To address this problem, this bill requires recipients of the cost share funds to reimburse the program if trees are not maintained and protected for 10 years. The funds would be used to fund new projects.

There has not been an increase in the assessment rate since the establishment of the program 1977. The State has appropriated $700,000 to the Fund each year since 1993. However, at the current rate, existing funds are not expect to last throughout the fiscal year. Under the current law, any State appropriations left in the fund at the end of the fiscal year revert to the General Fund and any interest accruing on the money in the Fund is credited to the General Fund. Under this bill, the Fund becomes an interest-bearing, non-reverting account to help maintain and increase the revenue available in the Fund.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1001

Short Title: Expand Amusement Tax Exemption. (Public)

Sponsors: Senators Kinnaird; Allran, Horton, and Weinstein.

Referred to: Finance.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE AMUSEMENTS TAX EXEMPTION FOR NONPROFIT PERFORMING ARTS CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-37.1(a) reads as rewritten:

"(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving, offering or managing any form of entertainment or amusement not otherwise taxed or specifically exempted in this Article, for which an admission is charged, shall pay an annual license tax of fifty dollars ($50.00) for each room, hall, tent or other place where ~~such~~ the admission charges are made.

In addition to the license tax levied above, ~~such person, firm, or corporation~~ the taxpayer shall pay an additional tax upon the gross receipts of ~~such~~ the business at the rate of three percent (3%). Reports shall be made to the Secretary ~~of Revenue, in such form as he may prescribe,~~ within the first 10 days of each month covering all ~~such~~ taxable gross receipts for the previous month, and the ~~additional tax herein levied~~ gross receipts tax shall be paid monthly at the time ~~such~~ the reports are made. The annual license tax ~~herein levied~~ shall be treated as an advance payment of the ~~tax upon gross receipts herein levied, and the annual license tax~~ gross receipts tax and shall be applied as a credit upon or advance payment of the gross receipts tax.

Every ~~person, firm, or corporation~~ person giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay an annual license tax of fifty dollars ($50.00) for each location where ~~such~~ the charges are made, and, in addition, a tax upon the gross receipts derived from

admission charges at the rate of three percent (3%). The additional tax upon gross receipts shall be levied and collected in accordance with ~~such regulations as may be made by the Secretary of Revenue.~~ rules adopted by the Secretary. No tax shall be levied on admission fees for high school and elementary school contests.

Dances and other amusements actually promoted and managed by civic organizations and private and public secondary ~~schools,~~ schools shall not be subject to the license tax imposed by this section and the first one thousand dollars ($1,000) of gross receipts derived from ~~such~~ these events shall be exempt from the gross receipts tax ~~herein levied~~ when the entire proceeds of ~~such~~ the dances or other amusements are used exclusively for the school or civic and charitable purposes of ~~such~~ the organizations and not to defray the expenses of the organization conducting ~~such~~ the dance or amusement. The mere sponsorship of dance or other amusement by such a school, civic, or fraternal organization ~~shall not be deemed to exempt such~~ does not exempt the dance or other amusement as provided in this paragraph, but the exemption shall apply only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization and the proceeds are used as ~~herein before required.~~ required by this paragraph.

Dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts are exempt from the license tax and the gross receipts tax imposed under this ~~section if the dance or other amusement is held at the center.~~ section. 'Qualifying corporation' means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). 'Center for the performing and visual arts' means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms and similar accommodations to organized arts groups and individual artists. This exemption shall not apply to athletic events.

The license and gross receipts taxes imposed by this section do not apply to a ~~person, firm, or corporation~~ person that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A 'teen center' is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1001
Proposed Committee Substitute S1001-PCS1852

Short Title: Expand Amusement Tax Exemption. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN AMUSEMENTS TAX EXEMPTION FOR CERTAIN NONPROFIT ARTS ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-37.1(a) reads as rewritten:

"(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving, offering or managing any form of entertainment or amusement not otherwise taxed or specifically exempted in this Article, for which an admission is charged, shall pay an annual license tax of fifty dollars ($50.00) for each room, hall, tent or other place where ~~such~~ the admission charges are made.

In addition to the license tax levied above, ~~such person, firm, or corporation~~ the taxpayer shall pay an additional tax upon the gross receipts of ~~such~~ the business at the rate of three percent (3%). Reports shall be made to the Secretary ~~of Revenue, in such form as he may prescribe,~~ within the first 10 days of each month covering all ~~such~~ taxable gross receipts for the previous month, and the ~~additional tax herein levied~~ gross receipts tax shall be paid monthly at the time ~~such~~ the reports are made. The annual license tax ~~herein levied~~ shall be treated as an advance payment of the ~~tax upon gross receipts herein levied, and the annual license tax~~ gross receipts tax and shall be applied as a credit upon or advance payment of the gross receipts tax.

Every ~~person, firm, or corporation~~ person giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay an annual license tax of fifty dollars ($50.00) for each location where ~~such~~ the

charges are made, and, in addition, a tax upon the gross receipts derived from admission charges at the rate of three percent (3%). The additional tax upon gross receipts shall be levied and collected in accordance with ~~such regulations as may be made by the Secretary of Revenue.~~ rules adopted by the Secretary. No tax shall be levied on admission fees for high school and elementary school contests.

Dances and other amusements actually promoted and managed by civic organizations and private and public secondary ~~schools,~~ schools shall not be subject to the license tax imposed by this section and the first one thousand dollars ($1,000) of gross receipts derived from ~~such~~ these events shall be exempt from the gross receipts tax ~~herein levied~~ when the entire proceeds of ~~such~~ the dances or other amusements are used exclusively for the school or civic and charitable purposes of ~~such~~ the organizations and not to defray the expenses of the organization conducting ~~such~~ the dance or amusement. The mere sponsorship of dance or other amusement by such a school, civic, or fraternal organization ~~shall not be deemed to exempt such~~ does not exempt the dance or other amusement as provided in this paragraph, but the exemption shall apply only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization and the proceeds are used as ~~herein before required.~~ required by this paragraph.

Dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts are exempt from the license tax and the gross receipts tax imposed under this section if the dance or other amusement is held at the center. 'Qualifying corporation' means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). 'Center for the performing and visual arts' means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms and similar accommodations to organized arts groups and individual artists. This exemption shall not apply to athletic events.

The license and gross receipts taxes imposed by this section do not apply to a ~~person, firm, or corporation~~ person that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A 'teen center' is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.

The license and gross receipts taxes imposed by this section do not apply to arts festivals held by a nonprofit arts organization that meets the following conditions:

(1) It holds no more than two arts festivals during a calendar year.

(2) Each of its arts festivals lasts no more than seven days.

(3) Its arts festivals are held outdoors on public property and involve a variety of exhibitions, entertainments, and activities."

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

EXPLANATION OF SENATE BILL 1001 (PCS):
Expand Amusement Tax Exemption

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 7, 1997
SPONSOR: Senator Kinnaird

This bill creates a new exemption from the privilege license tax on various forms of amusements and entertainments. The bill would exempt a nonprofit arts organization's arts festivals if the organization holds no more than two festivals a year and the festivals last no more than seven days each, are held outdoors on public property, and involve a variety of exhibitions and activities. The bill would become effective August 1, 1997.

The State levies a 3% gross receipts tax on anyone engaged in the business of offering amusements, athletic events, dances, and entertainments for which an admission is charged. Under current law, exemptions from the tax are narrowly drawn:

- Elementary and secondary athletic contests
- The first $1,000 of receipts from fund-raising dances actually managed by the civic group or school raising funds
- Fund-raising entertainments produced exclusively by volunteer local talent
- Entertainments (but not athletic events) offered at and by a nonprofit arts center
- Nonprofit teen centers

Like the 6% retail sales and use tax, the 3% gross receipts tax on amusements applies equally to nonprofit and for profit organizations selling admissions to the public, with a few exceptions. This tax system prevents nonprofit organizations from obtaining a competitive advantage over for profit organizations offering similar amusements.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1157

Short Title: Various State Tax Law Changes. (Public)

Sponsors: Representatives Morris; Cansler and Nichols.

Referred to: Finance.

April 24, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE STATUTES OF LIMITATIONS FOR TAX REFUNDS, TO CLARIFY THE CORPORATE INCOME TAX ON CERTAIN TAX-EXEMPT OBLIGATIONS, AND TO DELETE THE CAP ON CORPORATE INCOME TAX DEDUCTIONS OF DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-267 reads as rewritten:

"**§ 105-267. Taxes to be paid; suits for recovery of taxes.**

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax ~~imposed in this Subchapter.~~ to which this Article applies. Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper officer, and that payment shall be without prejudice to any defense of rights the person may have regarding the tax. At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the courts of the State for the amount demanded. The protest period for a tax levied in Article 2A, 2B, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is ~~one year after payment.~~ the period set by the statute of limitations in G.S. 105-266(c).

The suit may be brought in the Superior Court of Wake County, or in the Superior Court of the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it is determined that all or part of the tax was levied or assessed for an illegal

or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section."

Section 2. G.S. 105-266(c) reads as rewritten:

"(c) Statute of Limitations. -- The period in which a refund must be demanded or discovered under this section is determined as follows:

(1) General Rule. -- No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within ~~six months~~ two years after the payment of the tax alleged to be an overpayment, whichever is later.

(2) Worthless Debts or Securities. -- Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in Division II or III of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:

a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.

b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.

(3) Capital Loss and Net Operating Loss Carrybacks. -- Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in Division II or III of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.

(4) Federal Determination. -- When a taxpayer files with the Secretary a return that reflects a federal determination and the return is filed within the required time, the period in which a refund must be demanded or discovered is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later."

Section 3. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(1a) Interest upon the obligations of any of the following, net of related expenses, to the extent included in federal taxable income:

a. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.

b. A nonprofit educational institution organized or chartered under the laws of this State."

Section 4. G.S. 105-130.7 reads as rewritten:

"**§ 105-130.7. Deductible portion of dividends.**

(a) Regulated Investment Companies. -- A corporation may deduct the proportionate part of dividends received by it from a regulated investment company or a real estate investment trust, as defined in G.S. 105-130.12, as represents and corresponds to income received by the regulated investment company or real estate investment trust that would not be taxed by this State if received directly by the corporation.

(b) Subsidiary Dividends. -- A corporation that, at the close of its taxable year, has its commercial domicile within North Carolina may deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock.

~~Dividends from stock issued by a corporation are deductible to the extent provided in this section.~~

~~(1), (2). Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

~~(3) A corporation may deduct such proportionate part of dividends received by it from a regulated investment company or a real estate investment trust, as defined in G.S. 105-130.12, as represents and corresponds to income received by such regulated investment company or real estate investment trust which would not be taxed by this State if received directly by the corporation.~~

~~(3a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

~~(4) A corporation that, at the close of its taxable year, has its commercial domicile within North Carolina shall be allowed to deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock.~~

~~(5) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

~~(6) In no case shall the total amount of dividends that are allowed as a deduction to a corporation under subdivision (3) of this section exceed fifteen thousand dollars ($15,000) for the taxable year.~~"

Section 5. Sections 1 and 2 of this act become effective November 1, 1997, and apply to taxes paid on or after that date. The remainder of this act is effective for taxable years beginning on or after January 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1157
Proposed Senate Committee Substitute H1157-PCS7342

Short Title: Various Corporate Tax Law Changes. (Public)

Sponsors:

Referred to:

April 24, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CORPORATE INCOME TAX ON CERTAIN TAX-EXEMPT OBLIGATIONS AND TO DELETE THE CAP ON CORPORATE INCOME TAX DEDUCTIONS OF DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(1a) Interest upon the obligations of any of the following, net of related expenses, to the extent included in federal taxable income:

a. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.

b. A nonprofit educational institution organized or chartered under the laws of this State."

Section 2. G.S. 105-130.7 reads as rewritten:

"**§ 105-130.7. Deductible portion of dividends.**

(a) Regulated Investment Companies. -- A corporation may deduct the proportionate part of dividends received by it from a regulated investment company or a real estate investment trust, as defined in G.S. 105-130.12, as represents and corresponds to income received by the regulated investment company or real estate investment trust that would not be taxed by this State if received directly by the corporation.

(b) Subsidiary Dividends. -- A corporation that, at the close of its taxable year, has its commercial domicile within North Carolina may deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock.

~~Dividends from stock issued by a corporation are deductible to the extent provided in this section.~~

~~(1),~~ ~~(2). Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

~~(3) A corporation may deduct such proportionate part of dividends received by it from a regulated investment company or a real estate investment trust, as defined in G.S. 105-130.12, as represents and corresponds to income received by such regulated investment company or real estate investment trust which would not be taxed by this State if received directly by the corporation.~~

~~(3a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

~~(4) A corporation that, at the close of its taxable year, has its commercial domicile within North Carolina shall be allowed to deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock.~~

~~(5) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3.~~

~~(6) In no case shall the total amount of dividends that are allowed as a deduction to a corporation under subdivision (3) of this section exceed fifteen thousand dollars ($15,000) for the taxable year.~~"

Section 3. This act is effective for taxable years beginning on or after January 1, 1997.

EXPLANATION OF HOUSE BILL 1157 (PCS):
Various Corporate Tax Law Changes

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 7, 1997
SPONSOR: Representative Morris

House Bill 1157 is a recommendation of the North Carolina Bar Association. It makes the following changes to the corporate income tax laws effective for taxable years beginning on or after January 1, 1997:

1. It extends the income tax exclusion allowed individuals for interest on State or local obligations and obligations of nonprofit educational institutions organized or chartered in the State to corporations.
2. It conforms statutory law to the current practice of the Department of Revenue with regard to the taxability of dividend income received by corporations from regulated investment companies and real estate investment trusts.

The bond law exempts interest on State and local government obligations and on obligations of nonprofit educational institutions organized or chartered in the State from State income tax. The tax statutes provide for the deduction in the individual income tax statutes as well. However, there is not a similar provision in the corporate income tax statutes. Section 1 of the bill makes a conforming change in the corporate income tax statutes that specifically exempts interest on State and local government obligations and on obligations of nonprofit educational institutions organized or chartered in the State from State income tax.

Section 2 of the bill conforms the language of the statute to the current practice of the Department of Revenue with regard to the taxability of income received by a corporation from regulated investment companies and real estate investment trusts. Corporations and individuals may invest income in a regulated investment company, commonly known as mutual funds, and in a real estate investment trust. Under the Code, dividends paid by a regulated investment company or a real estate investment trust to its shareholders are treated as pass-through income, meaning that the character of the income remains the same after that income is passed to its shareholders. For example, interest on a State municipal bond is exempt if paid directly to a person. Under the Code, this income does not lose its tax exempt status because the person

receives it as a dividend from a regulated investment company or a real estate investment trust rather than directly from the tax-exempt source.

State corporate income tax law likewise provides that a corporation may deduct from State taxable income that portion of the dividends it receives from a regulated investment company or a real estate investment trust that it could deduct if it received the dividends directly, rather than through the regulated investment company or the real estate investment trust. The statute, however, appears to limit the amount a corporate investor may deduct under this pass-through treatment to $15,000. The Department of Revenue does not currently treat the cap as applicable to these types of pass-through income from federal, State, and local obligations. Arguably, this practice conflicts with the $15,000 statutory limitation. This section repeals the $15,000 cap.

The proposed committee substitute removes two provisions that would have extended the statute of limitations for requesting or making a tax refund.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: HOUSE BILL 1157
SHORT TITLE: VARIOUS STATE TAX LAW CHANGES
SPONSOR(S): REP. MORRIS

FISCAL IMPACT

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

PRINCIPAL DEPARTMENT AFFECTED: The tax changes are administered by the Department of Revenue. The changes are not expected to change the Department's costs.

BILL SUMMARY: (1) Conforms state law on the timing of lawsuits and refunds to the federal law. Under the current law an overpayment of tax must be discovered or demanded within 3 years after the date set by statute for filing the returns or within 6 months after the tax is paid, whichever is later. The effect of the bill is to change the "within 6 months" language to "two years". This change become effective November 1, 1997 and apply to taxes paid on or after that date (2) Extends the income tax exclusion allowed individuals for interest on state or local obligations and obligations of nonprofit educational institutions organized or chartered in the State to corporations. In most cases such interest is not included in federal taxable income. The effect of the bill is to exempt the interest of those obligations whose interest income is included in federal taxable income, net of related expenses. This change is effective for tax years beginning on or after January 1, 1997. (3) Conforms statutory law to the current practice of the Department of Revenue with regard to the taxability of income on regulated investment companies and real estate investment trusts. The current statutes limit the income deduction of corporations from these investment vehicles to $15,000. The Department of Revenue does not currently treat the cap as applicable to these types of pass-through income from federal, state, and local obligations since the federal treatment of these vehicles exempts pass-through income to investors that would have been exempt if the income flowed directly to the investor. The change is effective for tax years beginning on or after January 1, 1997.

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue is unable to identify an example whereby the enactment of the bill would cause a General Fund revenue loss. The extension of time for filing a tax protest has an unknown impact because at this time neither the Attorney General's Office or legislative staff are aware of any laws not under litigation that might be held unconstitutional. Also, many taxpayers are filing a protest when they pay their tax so the lengthening of the period would have no impact.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: May 13, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 35

Short Title: Conform Sales Tax Refund Period. (Public)

Sponsors: Representatives Capps, Blue, Cansler, Church, Neely, Shubert; and Aldridge.

Referred to: Finance.

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE TIME ALLOWED GOVERNMENT ENTITIES AND NONPROFIT ENTITIES FOR CLAIMING SALES TAX REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14(d) reads as rewritten:

"(d) Penalties for Late Applications. -- Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within ~~six months~~ three years after the due date, fifty percent (50%). Refunds applied for more than ~~six months~~ three years after the due date are barred."

Section 2. This act is effective when it becomes law and applies to sales taxes paid on or after January 1, 1994.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 35
Proposed Senate Committee Substitute H35-PCSX8258

Short Title: Conform Sales & Fuel Tax Refund Period. (Public)

Sponsors:

Referred to:

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE TIME ALLOWED FOR CLAIMING SALES TAX REFUNDS, MOTOR FUEL TAX REFUNDS, AND ALTERNATIVE FUEL TAX REFUNDS, AND TO PROVIDE THAT A MOTOR FUEL TAX REFUND IS NET OF THE SALES TAX DUE ON THE FUEL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14(d) reads as rewritten:

"(d) Penalties for Late Applications. -- Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within ~~six months~~ three years after the due date, fifty percent (50%). Refunds applied for more than ~~six months~~ three years after the due date are barred."

Section 2. G.S. 105-449.109 reads as rewritten:

"**§ 105-449.109. Reduction or denial of late a~~nual or quarterly~~ refund application.**

An application filed with the Secretary within ~~six months~~ three years of the date the application is due must be accepted but is subject to a penalty of twenty-five percent (25%) of the amount of the refund otherwise due if the application is filed within 30 days after the date the application is due, and is subject to a penalty of fifty percent (50%) of the amount of the refund otherwise due if the application is filed more than 30 days but within ~~six months~~ three years after the date the application is due. The Secretary shall not accept an application filed more than ~~six months~~ three years after the date the application is due."

Section 3. G.S. 105-164.13(11) reads as rewritten:

"(11) ~~Motor fuel subject to tax under Article 36C of this Chapter and alternative fuel subject to tax under Article 36D of this Chapter, regardless of whether those Articles exempt the fuel from tax or allow a refund of tax paid on the fuel.~~ Any of the following fuel:

a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105(c) or (d) or under G.S. 105-449.107.

b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107."

Section 4. G.S. 105-449.107, as amended by Section 14 of Chapter 33 of the 1997 Session Laws, reads as rewritten:

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

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

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

(1) A concrete mixing vehicle.

(2) A solid waste compacting vehicle.

(3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.

(4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.

(5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.

The ~~refund rate shall be computed by subtracting one cent (1¢) from the combined amount of~~ amount of refund allowed is thirty-three and one-third percent (33 1/3%) percent of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, ~~and multiplying the difference by thirty-three and one-third percent (33 1/3%).~~ less the amount of sales and use tax due on the fuel under this Chapter. An application for a refund allowed under this section ~~shall~~

must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. -- Article 5 of this Chapter determines the amount of sales and use tax to be deducted under this section from a motor fuel excise tax refund. The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

Section 5. Section 1 of this act and this section are effective when they become law. Sections 2 through 4 of this act become effective January 1, 1998, and apply to motor fuel and alternative fuel taxes paid on or after that date.

EXPLANATION OF HOUSE BILL 35:
Proposed Committee Substitute
Conform Sales Tax Refund Period

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 8, 1997
SPONSOR: Representative Capps
Recommendation of the Revenue Laws Study Committee

House Bill 35 would extend from six months to three years the period during which a governmental entity or nonprofit entity may claim a sales tax refund. The Department of Revenue suggested to the Revenue Laws Study Committee that the statute of limitations be extended from six months to three years, bringing it in line with the general rules of G.S. 105-266 and G.S. 105-266.1, which apply to refunds of overpayments of tax. Since the Committee made its report, the Department has suggested a couple of other similar changes to the motor fuel tax refund statutes. The proposed committee substitute, based upon the Department's suggestions, makes the following changes to the bill:

- Makes a conforming change to the motor fuel and alternative fuel refund statutes to give a taxpayer three years instead of six months to file for a refund.
- Changes the sales tax exemption for motor fuel to exclude from the sales tax exemption those motor fuels that have been granted a refund of motor fuel tax paid.
- Makes a corresponding change to the motor fuel refund statutes to deduct from the refund given the amount of sales tax that is due on the fuel.
- Changes the effective date of the sales tax refund change from January 1, 1994, to ratification. Makes the motor fuel tax changes effective January 1, 1998.

Under G.S. 105-164.14, nonprofit entities, certain hospitals, and certain governmental entities may seek a refund of State and local sales taxes they pay on their purchases. To do so, these entities must file a written request for refund with the Department of Revenue and name the counties where the purchases were made. Governmental entities must apply for the refund after the end of each fiscal year; other entities must apply for the refund semiannually. The application must be filed within six months. If the application is late, there is a penalty equal to a percentage of the refund claimed. If the application is more than six months late, it is barred. The Secretary of Revenue has the authority to

waive penalties for good cause, but once a refund is barred, the Secretary may not revive it. Section 1 of the bill extends the statute of limitations for refunds from six months to three years, bringing it in line with the general rules of G.S. 105-266 and G.S. 105-266.1, which apply to refunds of overpayments of tax. Section 2 of the bill makes a similar change for motor fuel tax refunds.

Under current law, motor fuel is exempt from sales tax, regardless of whether or not any motor fuel tax is payable. Section 3 provides that motor fuel for which a refund of the motor fuel tax is allowed because the motor fuel is accidentally mixed with some other type of fuel or the motor fuel is used in a boat is subject to sales tax. Section 4 provides that the applicable sales tax due on motor fuel used for an off-highway use is to be subtracted from any refund a taxpayer receives of motor fuel tax paid on that fuel. The section also clarifies that the price of motor fuel subject to sales tax is the average of the wholesale prices used to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed.

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 35 (First Edition)
SHORT TITLE: Conform Sales and Use Refund Period
SPONSOR(S): Representative Capps, et al.

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
General Fund	Gain $597,525 in a fiscal year				
Highway Fund	Loss less than $200,000 in a fiscal year				

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

EFFECTIVE DATE: Taxes paid on or after January 1, 1994.

BILL SUMMARY: The proposed act extends the time nonprofit organizations and government entities have to file for sales and use tax refunds from six months to three years. In addition, conforming changes are made to the motor fuel and alternative fuel refund statutes. This act conforms to the same period allowed taxpayers for refunds of overpayment of taxes.

The bill does not affect the penalty. If an applicant files within thirty days after the due date the penalty is still 25% of the refund. If an applicant files after thirty days but within three years, instead of six months, the penalty is still 50% of the refund. Refunds are barred if applied for three years after the due date instead of six months.

Each year bills are introduced in the General Assembly for refunds of nonprofit entities and State agencies whose refunds have been barred because their applications were filed six months after the due date. The Department of Revenue informed the Revenue Laws Study Commission that by increasing the filing deadline to three years most of the refund legislation could be eliminated.

ASSUMPTIONS AND METHODOLOGY : In fiscal year 1995-96, the total of all penalties did not exceed $250,000. In fiscal year 1995-96 18,732 nonprofit entities filed for a refund under G.S. 105-164.14(b) the total amount refunded equaled $153.9 million. Over the same period 740 government entities filed for a refund under G.S. 105-164.14(c) the total amount refunded equaled $56.4 million.

The revenue from the one cent under G.S. 105-449.107 was used to retire road bonds that have been paid off. As of January 1, 1996, 19 million gallons were subject to the 1 cent holdback from the off-highway use tax. If a taxpayer receives a refund on the taxes paid on motor fuels the sales and use tax will apply. The gain in a single fiscal year is expected to be $797,525. The net of the loss from the Sales and use tax refund and the gain from the motor fuels sales and use tax is $597,525 in general Fund revenues.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: H Warren Plonk
APPROVED BY: Tom L. Covington
DATE: February 27, 1997

North Carolina Department of Revenue

James B. Hunt, Jr.
Governor

July 10, 1997

Muriel K. Offerman
Secretary

MEMORANDUM

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

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

FROM: Muriel K. Offerman
Secretary of Revenue

RE: HOUSE BILL 35 -- A BILL TO BE ENTITLED AN ACT TO EXTEND THE TIME ALLOWED FOR CLAIMING SALES TAX REFUNDS, MOTOR FUELS REFUNDS, AND ALTERNATIVE FUEL TAX REFUNDS, AND TO PROVIDE THAT A MOTOR FUEL TAX REFUND IS NET OF THE SALES TAX DUE ON THE FUEL.

This bill amends G.S. 105-164.14(d) and G.S. 105-449.109 to provide for a statute of limitations of three years for filing sales tax, motor fuels tax and alternative fuels tax refunds. It further provides for the reduction of the motor fuels or alternative fuels refunds by the sales tax that would be due under G.S. 105-449.107.

Section 1: Amends G.S. 105-164.14(d) to allow for sales tax refunds to be filed up to three years after the due date of the return. Currently, the law allows the taxpayer up to six (6) months to file for the refund.

Section 2: Amends G.S. 105-449.109 to allow for motor fuels tax and alternative fuels tax refunds to be filed up to three years after the due date of the return. Currently, the law allows the taxpayer up to six (6) months to file for the refund.

Section 3: Rewrites G.S. 105-164.13(11) to exclude motor fuels and alternative fuels, which have been issued a refund under G.S. 105-449.105(c) and (d) or 105-449.107, from the exemption of sales tax. Currently, if motor fuels tax or alternative fuels tax was charged and then refunded to the user due to a non-highway use, the sales and use tax could not be applied to the untaxed fuel. This exemption was also extended to the fuel that was statutorily exempt from the fuel tax.

Section 4: Amends G.S. 105-449.107 to reduce the motor fuel refund, allowed under this section, by the amount of sales tax due on that fuel. The amount of sales tax due would be computed by using the average wholesale prices used to determine the excise tax rates for that period.

Section 5: Provides for Section 1 to become effective immediately upon ratification. Section 2 through Section 4 become effective January 1, 1998 and apply to motor fuel or alternative fuel taxes paid on or after that date.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 1073

Short Title: IRMC Restructuring. (Public)

Sponsors: Senator Hoyle.

Referred to: Rules and Operations of the Senate.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO THE INFORMATION RESOURCE MANAGEMENT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. This act relates to the Information Resource Management Commission.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1073
Proposed Committee Substitute S1073-PCS1859

Short Title: Auctioneer Amendments. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO AUCTIONEERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.6. Criminal record checks of auctioneer applicant.**

The Department of Justice may provide to the North Carolina Auctioneers Commission the criminal history from the State and National Repositories of Criminal Histories. The Commission shall provide to the Department of Justice, along with the request, the fingerprints of the applicant to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the applicant to be checked. The fingerprints of the applicant shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Commission shall keep all information pursuant to this section privileged. The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 2. G.S. 85B-4(b) reads as rewritten:

"(b) No person shall be licensed as an apprentice auctioneer, auctioneer, or receive an auction firm license if the person:

(1) Is under 18 years of age;
(2) Repealed by Session Laws 1983, c. 751, s. 6.
(3) Has within the preceding five years pleaded guilty to, entered a plea of **nolo contendere** or been convicted of any felony, or committed or been convicted of any act involving fraud or moral turpitude;
(4) Has had an auctioneer or apprentice auctioneer or auction firm license revoked; ~~or~~
(5) Has, within the preceding five years, committed any act which constitutes grounds for license suspension or revocation under this Chapter or a Commission ~~rule.~~ rule; or
(6) Is not a high school graduate or passed the General Educational Development Test indicating high school equivalency."

Section 3. G.S. 85B-4(d) reads as rewritten:

"(d) No person shall be licensed as an auctioneer unless the person has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, accumulated sufficient knowledge and experience in such areas of the auctioneer profession as the Commission may deem appropriate, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in Raleigh, and at other times and places the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

~~Any person who has been in the auctioneer business in this State for at least two years prior to the effective date of this act [July 1, 1973], and who makes proper application to the Commission within one year after July 1, 1973, may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice of two years, and without taking the examination required by this subsection.~~ Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution approved by the ~~Commission~~ Commission, having instructors meeting the minimum qualifications established by the Commission, may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but must take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of the applicant's performance as an apprentice auctioneer and the applicant's performance in specific areas as required by the Commission. If the applicant is exempted from apprenticeship after completion of the equivalent of at

least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of the applicant's course work in auctioneering. Each application shall be accompanied by statements of at least two residents of the community in which the applicant resides attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license and may request other information or verification of information provided to determine whether the applicant possesses the good moral character or other qualifications for licensure."

Section 4. G.S. 85B-4 is amended by adding a new subsection to read:

"(f1) The Commission may require licensees seeking renewal of a license under this Chapter to complete Commission approved continuing education of not more than six hours per year per licensee as a condition precedent to renewal. The Commission may impose different continuing education requirements, or none, upon the different classifications of licensees under this Chapter. The Commission shall be authorized to waive the continuing education requirement in cases of hardship, disability, or illness or under such other circumstances as the Commission deems appropriate. This subsection shall apply to each renewal cycle which begins after the 1998-99 renewal."

Section 5. G.S. 85B-4.1 reads as rewritten:

"**§ 85B-4.1. Auctioneer Recovery Fund.**

"(a) In addition to license fees, upon application for a license or renewal of a license, the Commission may charge the applicant or licensee up to fifty dollars ($50.00) per year to be included in the Fund.

(b) The Commission shall maintain at least ~~one~~ two hundred thousand dollars ~~($100,000)~~ ($200,000) in the Fund for use as provided in this Chapter. The Fund may be invested by the State Treasurer in interest bearing accounts, and any interest accrued shall be added to the Fund. Sufficient liquidity shall be maintained to insure that funds will be available to satisfy claims processed through the Board. The Fund may be disbursed by a warrant drawn against the State Treasurer or by other method at the discretion of the State Treasurer.

(c) The Commission, in its discretion, may use contents of the Fund in excess of ~~one~~ two hundred thousand dollars ~~($100,000)~~ ($200,000) for the following purposes:

(1) To promote education and research in the auctioneer profession, in order to benefit persons licensed under this Chapter and to improve the efficiency of the profession;

(2) To underwrite educational seminars, training centers, and other forms of educational projects for the use and benefit of licensees;

(3) To sponsor, contract for, or underwrite education and research projects in order to advance the auctioneer profession in North Carolina; and

(4) To cooperate with associations of auctioneers, or other groups, in order to promote the enlightenment and advancement of the auctioneer profession in North Carolina."

Section 6. G.S. 85B-6(a) reads as rewritten:

"(a) The Commission shall collect and remit to the State Treasurer fees in an amount not to exceed the following:

Item	Maximum Fee
Apprentice Auctioneers:	
Application for license	~~$50.00~~ $125.00
Issuance or renewal of license	~~50.00~~ 125.00
Auctioneers:	
Application for license	~~50.00~~ 125.00
Examination	~~25.00~~ 75.00
Issuance or renewal of license	~~100.00~~ 250.00
Auction Firms:	
Application for license	~~50.00~~ 125.00
Examination	~~25.00~~ 75.00
Issuance or renewal of license	~~100.00~~ 250.00
Reinstatement of License	~~25.00.~~ 75.00.

An application fee for a license and an examination fee are nonrefundable. The amount payable by a nonresident under G.S. 85B-5 to obtain a nonresident reciprocal auctioneer license is the greater of the amount set in the above table for an examination for and the issuance of an auctioneer's license and the amount the nonresident's state would charge a resident auctioneer of this State to obtain a comparable license from that state.

A reinstatement fee is payable when a person applies for renewal of a license after the license has lapsed for failure to renew it before it expired. The reinstatement of a lapsed license is not retroactive in effect and does not limit the authority of the courts or of the Commission to take disciplinary action against a person who engages in the auctioneer profession with a lapsed license."

Section 7. G.S. 85B-9(a) reads as rewritten:

"(a) Any person, corporation or association of persons violating the provisions of G.S. 85B-4(a) shall be guilty of a Class 1 misdemeanor. The Attorney General of North Carolina or his representative, shall have concurrent jurisdiction with the district attorneys of this State to prosecute violations of this Chapter."

Section 8. This act is effective when it becomes law, except that G.S. 85B-4(b)(6) as enacted by this act does not apply to any person holding a license under Chapter 85B of the General Statutes on that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1166 (First Edition)

SHORT TITLE: Auctioneer Education Requirements

SPONSOR(S): Rep. Black

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES/EXPENDITURES					
Special Revenue Fund	see **ASSUMPTIONS AND METHODOLOGY**				
Auctioneer Recovery Fund	see **ASSUMPTIONS AND METHODOLOGY**				

*Note: **No General Fund Impact**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Auctioneer Licensing Board, North Carolina Auctioneers Commission

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

BILL SUMMARY: The act makes several changes in Chapter 85B of the General Statutes concerning auctioneers. Section 1 of the bill requires auctioneer licensees to have a high school diploma or its equivalent. This section also requires licensees to complete 6 hours of continuing education courses each year for license renewal. Section two requires a minimum balance of $200,000 in the Auctioneer Recovery Fund. Section three increases the maximum fee that the Board can charge for licenses and exams. Section 4 authorizes the Attorney General to prosecute anyone acting as an auctioneer without a license.

ASSUMPTIONS AND METHODOLOGY:

Continuing Education

Section 1 of the bill allows the N. C. Auctioneers Commission to impose a continuing education requirement of up to 6 hours of courses on auctioneers seeking to renew their licenses. Although these courses are offered free to auctioneers twice a year at conventions of the Auctioneers Association of North Carolina, the Executive Director of the Board feels the requirement could discourage part-time auctioneers from renewing their license and thus reduce revenue for the Board's Special Revenue Fund. An unofficial estimate by the Board's Executive Director

projects the loss could be one fourth of current licensees. Since the language in HB 1166 is permissive, this fiscal note assumes the Board will not implement the continuing ed requirements within the next five years and thus no change in revenues.

Auctioneer Recovery Fund

Section 2 of the bill increases the minimum balance in the Auctioneer Recovery Fund that is used to compensate persons who have suffered monetary losses from the fraudulent acts of auctioneers. The bill increases the minimum from $100,000 to $200,000. In effect, this change puts into the statutes a practice that the Board has deemed prudent and sound fiscal policy for several years. In 1995, the fund balance in the Auctioneer Recovery Fund was $220,837. In 1996, the balance dipped to $188,977 primarily due to $30,521 in claims paid that year. With Fund interest and a $50 fee paid by new applicants, the Fund should return to $200,000 in 1997. If needed, the Board has the authority to assess all auctioneers a fee to insure the Fund has a sufficient balance.

Fees

Section 3 increases the maximum fee the Board can charge for licenses and exams for deposit into the Board's Special Revenue Fund for its operating budget. The Board has not increased the statutory maximum license fee since 1973, but did add exam and application fees in 1993. As shown in the chart below, the Board currently does not use the maximum fees allowed by statute. However, with expenditures exceeding revenues for the last two years, the Board has submitted a fee increase to the Rules Review Commission that would become effective September 1, 1998. The Board's Executive Director feels this fee increase will provide sufficient revenue for Board operations for the next five years. The chart below shows the impact if the Board chose to raise all fees to the maximum when given the authority under HB 1166.

	FY 1996-97	Current Fee	Current Revenue	Pending Fee Increase	Pending Revenue	HB 1166 Maximum Fee	HB 1166 Maximum Revenue
Apprentice Auctioneers							
Application for License	15	$25	$375	$50	$750	$125	$1,875
Issuance or Renewal of License	50	$25	$1,250	$50	$2,500	$125	$6,250
Auctioneers							
Application for License	130	$25	$3,250	$50	$6,500	$125	$16,250
Examination	145	$25	$3,625	$25	$3,625	$75	$10,875
Issuance or Renewal of License	2,525	$75	$189,375	$100	$252,500	$250	$631,250
Auction Firms							
Application for License	30	$25	$750	$50	$1,500	$125	$3,750
Examination	10	$25	$250	$25	$250	$75	$750
Issuance or Renewal of License	375	$75	$28,125	$100	$37,500	$250	$93,750
Reinstatement of License	250	$25	$6,250	$25	$6,250	$75	$18,750
Total			$233,250		$311,375		$783,500

FISCAL RESEARCH DIVISION
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington
DATE: June 18, 1997

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 9, 1997

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Byrd	Manning, Fulton & Skinner, PA Raleigh
Bill Scoggin	NCBA
Cam Cowell	BPMHL
Zeb Alley	ZDA PA
RW Kaylor	Kaylor Law Firm
Stuart Dixon	NCNG
Joe Pennacchia	Piedmont Natural Gas Co.
Zee Lamb	Lt. Gov. Office
Paul Sigmon	OSBM
Alice Garland	Electricities
RS	NC [illegible]

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 9, 1997

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
VEIGHTON PAPER	EDA, PA
Roberto Alomar	DC.
David McLeod	NCDA
VL McBride	NCFA
Bob Stevens	NC Forestry Assoc.
Kathy Boerner	Artsplosure
Patricia Yancey	Artsplosure / SCSL
Helen Lupini	Mech Co. DSS
Doug Lassiter	NC Septic Tank Assoc
Joy Williams	Commerce / Energy
Deborah Lamm	Commerce / Energy

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 9, 1997

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sabra Faires	Department of Revenue
Jim Hoard	NC Utilities Commission - Public Staff
A W Turner Jr	NC Utilities Commin. Public Staff
Gene Curtis	"
Jack Hoy	DOR
Mary Mumbeth	Pomm & Francis
Sullivan	NCMed Soc.
Charles Francis	Woods & Francis, PLLC
Greg Radford	DOR
Georgett Long	DOR
Betty Daniel	"

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 9, 1997

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jay Hove	DOR
Christine Davies	
Kate McGuire	NC Center for Nonprofits
Sam Kirby	NCUC
Gray Styers	Kilpatrick Stockton LLP
[illegible]	Rde Center for Alcohol Studies
Jerry Roberts	C.U.C.A.

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, July 10, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **14** Update Custom Computer Software
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **1001** Expand Amusement Tax Exemption
Draft Number: PCS1852
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1073** IRMC Restructuring
Draft Number: PCS1859
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **35** Conform Sales Tax Refund Period
Draft Number: PCSX8258
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

H.B. **1157** Various State Tax Law Changes
Draft Number: PCS7342
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1)**457** Amend Forest Development Act/AB.

Draft Number:	PCSA405
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1)**843** Cedar Rock Incorporation

Draft Number:	PCS6297
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 7

Committee Clerk Comment: Bills taken up in 7-9-97 Committee meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 16, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on July 16, 1997, with Senator Kerr presiding. There were 26 committee members present.

H.B. 75 0 - Charter of Forest Hills

Representative Beall was recognized to explain this bill. Senator Weinstein offered an amendment which was adopted by the committee. On motion by Senator Bob Shaw, the bill, as amended, was given a "favorable" report. The bill will be rolled into a committee substitute. Copy of bill, amendment and committee substitute included in the minutes.

H.B. 653 - Wentworth Charter Amendments

Representative Sexton was recognized to explain this bill. Senator Foxx moved for a "favorable" report and the motion carried. Copy of bill included in the minutes.

S.B. 696 - 3rd Senate District Local Act

Senator Perdue was called on to explain S.B. 696. On motion by Senator Hoyle, a proposed committee substitute was adopted. Senator Hoyle moved for the adoption of a technical amendment and the motion carried. Since Senator Perdue was not present, Senator Kerr displaced this bill temporarily.

H.B. 463 - Farm Products Weight Exemption

Representative Owens was recognized to explain this bill. Senator Weinstein moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

H.B. 524 - UNC Alcohol Studies Fund

Representative Morris was recognized to explain this bill. Senator Bob Shaw moved for a "favorable" report and the motion carried. Dr. Crews, Director of the Bowles Center for Alcohol Studies in Chapel Hill, was recognized for brief remarks in support of this bill. Copy of bill, explanation. fiscal note and other information included in the minutes.

H.B. 408 - Plumbing/Heating Contractors/AB

Representative Ives was recognized to explain this bill. Senator Kerr introduced Nick Fountain, Attorney for the Board, who gave a further explanation of the bill. After a brief discussion of the bill, Senator Rand moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

H.B. 1158 - Reduce Property Tax for Antique Planes

Representative Bob Hunter was recognized to explain H.B. 1158. At the conclusion of his explanation, Senator Conder moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

Senator Kerr asked for vote on **S.B. 696 -3rd Senate District Local Act** and on motion by Senator Phillips, the committee substitute, as amended, was given a "favorable" report. Copy of bill, and committee substitute included in the minutes. (Copy of technical amendment not available.)

H.B. 1108 - Brew on Premises Permits

Representative McMahan was recognized to explain this bill. Senator Rand moved that a proposed committee substitute be adopted and the motion carried. Senator Dannelly moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill, committee substitute, explanation and fiscal note included in the minutes.

S.B. 886 - Trucking Adjustment Act of 1997

Senator Jordan was recognized to explain this bill. On motion by Senator Conder, proposed committee substitute was adopted. Virgil McBride, representing the North Carolina Trucking Association, spoke in favor of this bill. Also, two former Motor Vehicle Commissioners, Mr. Bill Peters and Representative Hiatt, were recognized as supporters of this bill. At the conclusion of the explanation, there was a lengthy discussion on this bill with questions from the committee members to bill sponsor and supporters of the bill. Carol Howard, DMV, Director of Vehicle Registration, was recognized for remarks concerning this bill. Also Major Arrowood, Assistant Director with DMV Enforcement, was recognized and explained that there was some concern in his department with this bill. Since there were so many unresolved issues concerning this bill, it was held over and not voted on today. Copy of bill, committee substitute and fiscal note included in the minutes.

H.B. 1121 - Brownfield Property Reuse Act

Representative McComas was recognized to explain this bill. At the conclusion of his explanation, there were several questions from the committee members which were answered by the bill sponsor and by George Givens, Staff Attorney. Since there were several unanswered questions concerning this bill, Senator Kerr announced that the bill would not be voted on today but would be taken up again at a later date. Copy of bill, explanation and fiscal note included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

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

H.B. 96 and H.B. 251 were not heard in the committee meeting.

Attachment # 1

AGENDA
SENATE FINANCE COMMITTEE MEETING

July 16, 1997 - 8:30 A.M.

Room
544

H.B. 96 - Intangibles Tax Remedy - Rep. Dickson

H.B. 251 - Well Contractors - Rep. Culp

H.B. 408 - Plumbing/Heating Contractors - Rep. Ives

H.B. 463 - Farm Products Weight Exemption - Rep. Owens

H.B. 524 - UNC Alcohol Studies Fund - Rep. Morris

H.B. 653 - Wentworth Charter Amendments - Rep. Sexton

H.B. 750 - Charter of Forest Hills - Rep. Beall

H.B. 1108 - Brew on Premises Permitted - Rep. McMahan

H.B. 1121 - Brownfield Property Reuse Act - Rep. McComas

H.B. 1158 - Reduce Property Tax/Antique Planes - Rep. R. Hunter

S.B. 696 - 3rd Senate District Local Act - Sen. Perdue

S.B. 886 - Trucking Adjustment Act of 1997 - Sen. Jordan

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 750*

Short Title: Charter of Forest Hills. (Local)

Sponsors: Representatives Beall and Ramsey.

Referred to: Local and Regional Government II, if favorable, Finance.

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE VILLAGE OF FOREST HILLS, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Village of Forest Hills is enacted to read:

"CHARTER OF THE VILLAGE OF FOREST HILLS.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village of Forest Hills are a body corporate and politic under the name 'Village of Forest Hills'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Village Boundaries.** Until modified in accordance with law, the boundaries of the Village of Forest Hills are as follows:

BEGINNING at the point of intersection of the projection of a Northwest direction of a line extending along the Northeastern boundary of Lot 1. of the Forest Hills Subdivision shown on Jackson County NC tax map 7559(17) with a Northeast projection of a line extending along the North side of State Road 1330 (Dillard Farm Road),

-Thence Southeast to the easternmost corner of Lot 2, Forest Hills Subdivision,

-Thence turning and running in a south and southeasterly direction to the southeasternmost corner of Lot 14, Forest Hills Subdivision identified as tax parcel 7559-20-2275,
-Thence turning and running in a west and southwest direction with the southeast boundaries of Lots 9, 10, 11, 12, 13, and 14 of the Forest Hills Subdivision identified as Jackson County tax parcels 7559-10-6040, 7559-10-7085, 7559-10-9110, 7559-20-0134, 7559-20-1148 and 7559-20-2275 to the Southwesternmost corner of Lot 9, Forest Hills Subdivision, identified as Jackson County tax parcel 7559-10-6040,
-Thence turning and running generally south with the east boundary of Lots 11, 12, 13, 14, 15, and 16 of the Forest Hills Subdivision identified on Jackson County tax map 7558(05) as parcels 7558-19-5980, 7558-19-5559, 7558-19-5421, 7558-19-5248, 7558-19-5143, and 7558-18-5946 to the southernmost corner of Lot 16, Forest Hills Subdivision identified on Jackson County tax map 7558(05) as parcel 7558-18-5946,
-Thence turning and running west and southwest with the southeast boundaries of Lots 16, 18, 20, and 23 of the Forest Hills Subdivision identified on the Jackson County tax map 7558(05) as parcels 7558-18-5946, 7558-18-4910, 7558-18-2970, and 7558-18-1836 to the Southwesternmost corner of Lot 23 of the Forest Hills Subdivision identified on the Jackson County tax map 7558(05) as parcel 7558-18-1836.
-Thence turning and running southeast with the Northeast boundary of Lot 26 and 27 of the Forest Hills Subdivision identified on Jackson County tax map 7558(05) as parcel 7558-08-9784 and with the Northeast boundary of Lot 20 and Lot 22 of the Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcels 7558-18-1641 and 7558-18-1443 to the southeasternmost corner of Lot 22 of the Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-1443,
-Thence turning and running generally southwest with the southeast boundaries of Lot 22 to the Southwesternmost corner of Lot 22 of the Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-1443,
-Thence turning and running southeast with the northeast boundary of Lot 15 Oak Forest Subdivision to the easternmost corner of Lot 15, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-1221,
-Thence turning and running generally south along the eastern boundary of Lot 15, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-1221,
-Thence turning and running generally west with the south boundary of Lot 15, Oak Forest Subdivision as identified on Jackson County tax map as parcel 7558-18-1221,
-Thence turning and running generally southwest to the southernmost corner of Lot 14, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-08-9276,
-Thence turning and running generally northwest to the northwesternmost corner of Lot 14, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-08-9276,

-Thence turning and running generally southwest with the southeast boundaries of Lots 31, and 32, Forest Hills Subdivision and Lot 20 Forest Hills Estates Subdivision as identified on Jackson County tax map 7558(05) as parcels 7558-08-7222, 7558-08-5173, and 7558-07-2944 to the southeasternmost corner of Lot 20, Forest Hills Estates Subdivision as identified on Jackson County tax map 7558(05) as parcel 7558-07-2944,

-Thence turning and running generally west with the southern boundary of Lot 20, Forest Hills Estates Subdivision identified on Jackson County tax map 7558(05) and with the southern boundaries of Lots 16, 11, and 9, Forest Hills Estates Subdivision as identified on Jackson County tax map 7548(02) as parcels 7548-97-4329, 7548-87-8394, and 7548-87-0413 to the southwesternmost corner of Lot 9, Forest Hills Subdivision as identified on Jackson County tax map 7548(02) as parcel 7548-87-0413,

-Thence turning and running generally north with the west boundaries of Lots 9, 7, 5, and 4 of the Forest Hills Estates Subdivision identified on Jackson County tax map 7548(02) as parcels 7548-87-0413, 7548-77-9820, 7548-78-8182, and 7548-78-9470 to the northwesternmost corner of Lot 4, Forest Hills Estates Subdivision identified on Jackson County tax map as parcel 7548-78-9470,

-Thence turning and running generally west with the southern boundaries of the parcels identified on Jackson County tax map 7548(02) as parcel numbers 7548-78-6523, 7548-78-5506, 7548-78-3569 to the southeasternmost corner of parcel 7548-78-3569 on Jackson County tax map 7548(02),

-Thence turning and running south and southwest with the east and southeast boundaries of parcel number 7548-78-2539 and 7548-68-9458 on Jackson County tax map 7548(02) to the southernmost corner of parcel 7548-68-9458 on Jackson County tax map 7548(02),

-Thence turning and running generally west with the southern boundaries of parcels 7548-68-9458 and 7548-68-5586 on Jackson County tax map 7548(02) to the southwesternmost corner of parcel 7548-68-5586 on Jackson County tax map 7548(02),

-Thence turning and running generally south with the eastern boundary of Lot 41 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel number 7548-68-2313 to the southernmost corner of Lot 41 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-68-2313,

-Thence turning and running generally west with the southern boundaries of Lot 44, 45, 46, and 48 Dillard Subdivision as identified on Jackson County tax map 7548(02) as parcels 7548-58-8172, 7548-58-5171, 7548-58-3123, and 7548-58-0251 to the southwesternmost corner of Lot 48 Dillard Subdivision identified on Jackson County tax map as parcel 7548-58-0251,

-Thence turning and running generally north with the western boundaries of Lot 48 Forest Hills, and Lot 57 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-58-0251, 7548-58-1742, and 7548-59-1077 to the northwesternmost corner of Lot 57 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-59-1077,

-Thence turning and running generally northeast with the northern boundaries of Lots 57, 58, 60, 62, Dillard Subdivision Lot 344 and 342 Forest Hills Subdivision and Lot 64 Dillard Subdivision identified on Jackson County tax map as parcels 7548-59-1077, 7548-59-6138, 7548-69-9241, 7548-69-2219, 7548-69-6483 and 7548-69-6892 to the northeasternmost corner of Lot 64, Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-69-6892,

-Thence turning and running north with the western boundaries of Lot 67 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-1217 to the northwesternmost corner of Lot 67 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-1217,

-Thence turning and running generally northeast with the northern boundary of Lot 67 Dillard subdivision identified on Jackson County tax map 7548(02)as parcel 7548-79-1217 to the northeasternmost corner of Lot 67 Dillard identified on Jackson County tax map 7548(02) as parcel 7548-79-1217,

-Thence turning and running generally southeast with the eastern boundary of Lot 67 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-1217,

-Thence turning and running generally northeast along the northern boundary of Lot 70 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-7849 to the northeasternmost corner of Lot 70 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-7849,

-Thence turning and running generally southeast with the eastern boundary of Lot 70 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-7849,

-Thence turning and running generally northeast with the boundaries of Lots 316, 306, 304, and 302 Forest Hills Subdivision identified on Jackson County tax map 7548(02) as parcels 7548-89-2866 and two unnumbered parcels,

-Thence turning and running generally north with the western boundary of Lot 79 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-80-7281 to the northeasternmost corner of Lot 79 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-80-7281,

-Thence turning and running generally southeast with the eastern boundary of Lot 79 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-80-7281 to the northeasternmost corner of Lot 79 Dillard Subdivision identified on Jackson County tax map 7549(02) as parcel 7549-80-7281,

-Thence turning and running generally northeast for approximately 400 feet with the northern boundary of an unidentified parcel shown on Jackson County tax map 7548(02) to the northwesternmost corner of Lot 84 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-99-4947,

-Thence turning and running generally southeast with the northeast boundary of Lot 84, Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-99-4947 to the northeasternmost corner of Lot 84, Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-99-4947,

-Thence turning and running generally northeast with the northwest boundary of parcel 7548-99-8653 on Jackson County tax map 7548(02) to the northernmost corner of parcel 7548-99-8653 identified on Jackson County tax map 7548(02),
-Thence turning and running generally southeast with the northeast boundary of parcel 7548-99-8653 identified on Jackson County tax map 7548(02) to the intersection of the northern edge of State Road 1330, Dillard Farm Road, as shown on Jackson County tax map 7548(02),
-Thence turning and running generally east with the north side of State Road 1330, Dillard Farm Road, for approximately 210 ft to the southwesternmost corner of parcel 7558-09-3995 identified on Jackson County tax map 7558(05),
-Thence turning and running north with the western boundary of parcel 7558-09-3995 as identified on Jackson County tax map 7558(02) to the northwesternmost corner of parcel 7558-09-3995 as identified on Jackson County tax map 7558(02),
-Thence turning and running northeast with the northern boundaries of parcels 7558-09-3995 and 7558-09-7459 identified on Jackson County tax map 7558(05) to the northeasternmost corner of parcel 7558-09-7459 identified on Jackson County tax map 7558(05),
-Thence turning and running generally southeast with the northeast boundary of parcel 7558-09-7459 identified on Jackson County tax map 7558(05) to the southeasternmost corner of parcel 7558-09-7459 identified on Jackson County tax map 7558(05),
-Thence turning and running generally north and northwest with the western boundary of parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to the northwesternmost corner of parcel 7559-10-1074 identified on Jackson County tax map 7559(17),
-Thence turning and running generally northeast with the northwest boundary of parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to the northeasternmost corner of parcel 7559-10-1074 identified on Jackson County tax map 7559(17),
-Thence turning and running generally southeast with the northeast boundary of parcel 7559-10-1074 identified on Jackson County tax map 7559(17) to the intersection with the north side of State Road 1330, Dillard Farm Road,
-Thence turning and running generally northeast for approximately 1050 feet with the north side of State Road 1330, Dillard Farm Road, identified on Jackson County tax map 7559(17) to the point of BEGINNING. All references to 'tax maps' refer to Jackson County Tax Maps as of March 3, 1997.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Village of Forest Hills is the Village Council, which has four members and the Mayor.

"Section 3.2. **Manner of Electing Village Council.** The qualified voters of the entire Village of Forest Hills shall elect the members of the Village Council.

"Section 3.3. **Term of Office for Village Council Members.** Members of the Village Council are elected to four-year terms, except for the initial election in 1997. In 1997, two members of the Village Council shall be elected to four-year terms, and two members of the Village Council shall be elected to two-year terms. Thereafter, each member of the Village Council shall be elected for four-year terms.

"Section 3.4. **Selection of Mayor; Term of Office.** The Mayor is elected to a two-year term. The qualified voters of the entire Village of Forest Hills shall elect a Mayor. A Mayor shall be elected in 1997 and biennially thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Conduct of Village Elections.** Village officers shall be elected on a nonpartisan basis, and the results determined by the plurality method.

"CHAPTER V.

"ADMINISTRATION.

"Section 5.1. **Mayor-Council Plan.** The Village of Forest Hills operates under the Mayor-Council Plan as provided by Part 3 of Article 7 of Chapter 160B of the General Statutes. The Mayor shall vote only in those cases necessary to break a tie.

"Section 5.2. **Interim Mayor and Village Council.** Until members of the Village Council are elected in 1997 in accordance with the Village Charter and the law of North Carolina, Irene M. Hooper shall serve as interim Mayor; and Jean Adams, Lawrence G. Kolenbrander, James W. Pearce, and Harold J. Williford shall serve as interim members of the Village Council, with all powers and authority as if they had been duly elected."

Section 2. On or before September 1, 1997, the Jackson County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Village of Forest Hills, the question of whether or not such area shall be incorporated as the Village of Forest Hills.

Section 3. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Incorporation of the Village of Forest Hills".

Section 4. In the election, if a majority of the votes are cast "For the incorporation of the Village of Forest Hills", this Charter becomes effective on the date that the Jackson County Board of Elections certifies the results of the election. Otherwise, Sections 1 through 3 of this act shall have no force and effect.

Section 5. If a majority of the voters approve an incorporation of the Village of Forest Hills, the election of the Village Council and Mayor shall take place at an election held on the general election on the Tuesday after the first Monday in November 1997.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 750

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

H750-ARB-7/16

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Senator_____

moves to amend the bill on page 6, line 25, by deleting "September 1, 1997," and substituting "November 4, 1997,";

and on page 6, lines 39 and 40, by rewriting the lines to read: "at an election held on a date set by the Jackson County Board of Elections, but no later than July 1, 1998.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 750*
Proposed Senate Committee Substitute H750-PCS4138

Short Title: Charter of Forest Hills. (Local)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE VILLAGE OF FOREST HILLS, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Village of Forest Hills is enacted to read:

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"Section 2.1. **Village Boundaries.** Until modified in accordance with law, the boundaries of the Village of Forest Hills are as follows:

BEGINNING at the point of intersection of the projection of a Northwest direction of a line extending along the Northeastern boundary of Lot 1. of the Forest Hills Subdivision shown on Jackson County NC tax map 7559(17) with a Northeast projection of a line extending along the North side of State Road 1330 (Dillard Farm Road),

-Thence Southeast to the easternmost corner of Lot 2, Forest Hills Subdivision,

-Thence turning and running in a south and southeasterly direction to the southeasternmost corner of Lot 14, Forest Hills Subdivision identified as tax parcel 7559-20-2275,
-Thence turning and running in a west and southwest direction with the southeast boundaries of Lots 9, 10, 11, 12, 13, and 14 of the Forest Hills Subdivision identified as Jackson County tax parcels 7559-10-6040, 7559-10-7085, 7559-10-9110, 7559-20-0134, 7559-20-1148 and 7559-20-2275 to the Southwesternmost corner of Lot 9, Forest Hills Subdivision, identified as Jackson County tax parcel 7559-10-6040,
-Thence turning and running generally south with the east boundary of Lots 11, 12, 13, 14, 15, and 16 of the Forest Hills Subdivision identified on Jackson County tax map 7558(05) as parcels 7558-19-5980, 7558-19-5559, 7558-19-5421, 7558-19-5248, 7558-19-5143, and 7558-18-5946 to the southernmost corner of Lot 16, Forest Hills Subdivision identified on Jackson County tax map 7558(05) as parcel 7558-18-5946,
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-Thence turning and running southeast with the northeast boundary of Lot 15 Oak Forest Subdivision to the easternmost corner of Lot 15, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-1221,
-Thence turning and running generally south along the eastern boundary of Lot 15, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-18-1221,
-Thence turning and running generally west with the south boundary of Lot 15, Oak Forest Subdivision as identified on Jackson County tax map as parcel 7558-18-1221,
-Thence turning and running generally southwest to the southernmost corner of Lot 14, Oak Forest Subdivision identified on Jackson County tax map 7558(01) as parcel 7558-08-9276,
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-Thence turning and running generally southwest with the southeast boundaries of Lots 31, and 32, Forest Hills Subdivision and Lot 20 Forest Hills Estates Subdivision as identified on Jackson County tax map 7558(05) as parcels 7558-08-7222, 7558-08-5173, and 7558-07-2944 to the southeasternmost corner of Lot 20, Forest Hills Estates Subdivision as identified on Jackson County tax map 7558(05) as parcel 7558-07-2944,

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-Thence turning and running generally north with the west boundaries of Lots 9, 7, 5, and 4 of the Forest Hills Estates Subdivision identified on Jackson County tax map 7548(02) as parcels 7548-87-0413, 7548-77-9820, 7548-78-8182, and 7548-78-9470 to the northwesternmost corner of Lot 4, Forest Hills Estates Subdivision identified on Jackson County tax map as parcel 7548-78-9470,

-Thence turning and running generally west with the southern boundaries of the parcels identified on Jackson County tax map 7548(02) as parcel numbers 7548-78-6523, 7548-78-5506, 7548-78-3569 to the southeasternmost corner of parcel 7548-78-3569 on Jackson County tax map 7548(02),

-Thence turning and running south and southwest with the east and southeast boundaries of parcel number 7548-78-2539 and 7548-68-9458 on Jackson County tax map 7548(02) to the southernmost corner of parcel 7548-68-9458 on Jackson County tax map 7548(02),

-Thence turning and running generally west with the southern boundaries of parcels 7548-68-9458 and 7548-68-5586 on Jackson County tax map 7548(02) to the southwesternmost corner of parcel 7548-68-5586 on Jackson County tax map 7548(02),

-Thence turning and running generally south with the eastern boundary of Lot 41 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel number 7548-68-2313 to the southernmost corner of Lot 41 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-68-2313,

-Thence turning and running generally west with the southern boundaries of Lot 44, 45, 46, and 48 Dillard Subdivision as identified on Jackson County tax map 7548(02) as parcels 7548-58-8172, 7548-58-5171, 7548-58-3123, and 7548-58-0251 to the southwesternmost corner of Lot 48 Dillard Subdivision identified on Jackson County tax map as parcel 7548-58-0251,

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-Thence turning and running generally northeast with the northern boundary of Lot 67 Dillard subdivision identified on Jackson County tax map 7548(02)as parcel 7548-79-1217 to the northeasternmost corner of Lot 67 Dillard identified on Jackson County tax map 7548(02) as parcel 7548-79-1217,
-Thence turning and running generally southeast with the eastern boundary of Lot 67 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-1217,
-Thence turning and running generally northeast along the northern boundary of Lot 70 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-7849 to the northeasternmost corner of Lot 70 Dillard Subdivision identified on Jackson County tax map 7548(02) as parcel 7548-79-7849,
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"CHAPTER V.

"ADMINISTRATION.

"Section 5.1. **Mayor-Council Plan.** The Village of Forest Hills operates under the Mayor-Council Plan as provided by Part 3 of Article 7 of Chapter 160B of the General Statutes. The Mayor shall vote only in those cases necessary to break a tie.

"Section 5.2. **Interim Mayor and Village Council.** Until members of the Village Council are elected in 1997 in accordance with the Village Charter and the law of North Carolina, Irene M. Hooper shall serve as interim Mayor; and Jean Adams, Lawrence G. Kolenbrander, James W. Pearce, and Harold J. Williford shall serve as interim members of the Village Council, with all powers and authority as if they had been duly elected."

Section 2. On or before November 4, 1997, the Jackson County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Village of Forest Hills, the question of whether or not such area shall be incorporated as the Village of Forest Hills.

Section 3. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Incorporation of the Village of Forest Hills".

Section 4. In the election, if a majority of the votes are cast "For the incorporation of the Village of Forest Hills", this Charter becomes effective on the date that the Jackson County Board of Elections certifies the results of the election. Otherwise, Sections 1 through 3 of this act shall have no force and effect.

Section 5. If a majority of the voters approve an incorporation of the Village of Forest Hills, the election of the Village Council and Mayor shall take place at an election held on a date set by the Jackson County Board of Elections, but no later than July 1, 1998. Initial terms shall expire at the time provided by general law as if the election had taken place at the general election on the Tuesday after the first Monday in November 1997.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 653*
Committee Substitute Favorable 5/12/97

Short Title: Wentworth Charter Amendments. (Local)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CHARTER OF THE TOWN OF WENTWORTH, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 76 of the Private Laws of 1798 is amended by adding a new section to read:

"VII. The Charter of the Town of Wentworth is revised and consolidated to read:

"CHARTER OF THE TOWN OF WENTWORTH.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Sec. 1.1. The inhabitants of the Town of Wentworth are a body corporate and politic under the name 'Town of Wentworth'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. Until changed in accordance with law, the boundaries of the Town of Wentworth are as follows:

Beginning at a point four hundred feet northwest of the northern right-of-way of Sandy Cross Road; said point being four hundred feet southwest of and perpendicular to the southern right-of-way of Vernon Road; thence from said point in a generally northeasterly direction and being four hundred feet parallel to the northern right-of-way of the Sandy Cross Road to a point in the centerline of NC Highways 65 and 87;

said point being four hundred feet perpendicular to and westerly from the northern right-of-way of Sandy Cross Road Extended to the centerline of NC Highways 65 and 87; thence from said point, westerly with the centerline of NC Highways 65 and 87 about fifty feet to a point; thence from said point in a northeasterly direction about four hundred fifty feet to a point; said point being four hundred feet perpendicular to and northeasterly from the northern right-of-way of NC Highways 65 and 87 and four hundred feet perpendicular to and northwesterly from the northern right-of-way of Wentworth Street; thence from said point four hundred feet parallel to the northern right-of-way of Wentworth Street and running in a generally northeasterly direction to a point; said point being about two hundred feet east of Setliff Road and four hundred feet north of Wentworth Street; thence in a northerly direction about two thousand one hundred feet to the northeast corner of lot seven of the Setliff Glenn Subdivision (MB 28-275); said point located about eight hundred fifty feet to the east of the cul-de-sac at the end of Setliff Road; thence northeasterly about two thousand thirty feet to a point at the corner of the University Estates Subdivision; thence easterly about two thousand feet along the southeasterly boundary line of the University Estates Subdivision to a point near Cedar Lane which intersects the boundary of the existing Wentworth Fire District boundary line; thence northerly along the Wentworth Fire District line abut five thousand five hundred feet to a point; said point being about four hundred feet south of the intersection of NC 1992 and Berrymore Road; thence from said point north about eight hundred sixty feet to a point; said point being four hundred feet north of and perpendicular to the northern right-of-way of Berrymore Road; thence from said point in a generally westerly direction and being four hundred feet parallel to the northern right-of-way of Berrymore Road to a point four hundred feet east of the eastern right-of-way of Ashley Loop Road; said point being four hundred feet east of and perpendicular to the eastern right-of-way of Ashley Loop Road; thence from said point in a generally northerly direction and being four hundred feet parallel to the eastern right-of-way of Ashley Loop Road to a point; said point being about four hundred thirty feet east of the intersection of Ashley Loop Road and Richardson Road; thence from said point in a westerly direction about eight hundred sixty feet to a point four hundred feet west of the the western right-of-way of Ashley Loop Road; said point being four hundred feet west of and perpendicular to the western right-of-way of Ashley Loop Road; thence from said point in a generally southerly direction and being four hundred feet west of and parallel to the western right-of-way of Ashley Loop Road to a point four hundred feet east of its intersection with the eastern right-of-way of NC Highway 87; said point being four hundred feet east of and perpendicular to the eastern right-of-way of NC Highway 87; thence from said point in a generally northerly direction and being four hundred feet east of and parallel to the eastern right-of-way of NC Highway 87 to a point in the center of Roach Creek; said point being four hundred feet east of and perpendicular to the eastern right-of-way of NC Highway 87; thence from said point in a generally westerly direction following the centerline of Roach Creek about eight hundred sixty feet to a point in Roach Creek; said point being four hundred feet west of and perpendicular to the western right-of-

way of NC Highway 87; thence from said point in a generally southerly direction and being four hundred feet west of and parallel to the western right-of-way of NC Highway 87 to a point four hundred feet north of its intersection with the northern right-of-way of Dillard Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Dillard Road; thence from said point in a generally westerly direction and being four hundred feet north of and parallel to the northern right-of-way of Dillard Road to a point four hundred feet north of the end of the northern right-of-way of Dillard Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Dillard Road; thence from said point south about five hundred sixty feet to a point one hundred feet south of the end of the southern right-of-way of Dillard Road; said point being one hundred feet south of and perpendicular to the end of the right-of-way of Dillard Road; thence from said point in a generally easterly direction and being one hundred feet south of and parallel to the southern right-of-way of Dillard Road to a point four hundred feet west of the western right-of-way of NC Highway 87; said point being one hundred feet south of and perpendicular to the southern right-of-way of Dillard Road; thence from said point in a generally southerly direction and being four hundred feet west of and parallel to the western right-of-way of NC Highway 87 to a point four hundred feet north of its intersection with the northern right-of-way of Pannel Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Pannel Road; thence from said point in a generally westerly direction and being four hundred feet north of and parallel to the northern right-of-way of Pannel Road to a point in the center of Rock House Creek; said point being four hundred feet north of and perpendicular to the northern right-of-way of Pannel Road; thence from said point in a generally southerly direction with the center of Rock House Creek to a point four hundred feet south of its intersection with the southern right-of-way of NC Highway 65; said point being four hundred feet south of and perpendicular to the southern right-of-way of NC Highway 65; thence from said point in a generally easterly direction and being four hundred feet south of and parallel to the southern right-of-way of NC Highway 65 to a point on the northwest right-of-way of the Transcontinental gas pipeline; said point being four hundred feet southwest of and perpendicular to the southwest right-of-way of NC Highway 65; thence from said point in a generally southwesterly direction and following the northwest right-of-way of the Transcontinental gas pipeline to a point four hundred feet northeast of its intersection with the northeast right-of-way of Gunntown Road; said point being four hundred feet northeast of and perpendicular to the northeast right-of-way of Gunntown Road; thence from said point in a generally northwesterly direction and being four hundred feet northeast of and parallel to the northeasterly right-of-way of Gunntown Road to a point four hundred feet northeast of the end of the right-of-way for Gunntown Road; said point being four hundred feet northeast of and perpendicular to the northeast right-of-way of Gunntown Road; thence from said point southwest about eight hundred sixty feet to a point four hundred feet southwest of the end of the southwest right-of-way of Gunntown Road; said point being four hundred feet southwest of and perpendicular to the end of the southwest right-of-way

of Gunntown Road; thence from said point in a generally southeasterly direction and being four hundred feet southwest of and parallel to the southwest right-of-way of Gunntown Road to a point four hundred feet northwest of the northern right-of-way of Carter Road; said point being four hundred feet west of and perpendicular to Gunntown Road; thence from said point in a westerly direction and being four hundred feet north of and parallel to the northern right-of-way of Carter Road to a point four hundred feet north of the end of the northern right-of-way of Carter Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Carter Road; thence from said point southwest about eight hundred sixty feet to a point four hundred feet south of the end of the southern right-of-way of Carter Road; said point being four hundred feet southwest of and perpendicular to the end of the southern right-of-way of Carter Road; thence from said point in a generally easterly direction and being four hundred feet south of and parallel to the southern right-of-way of Carter Road to a point four hundred feet west of the western right-of-way of Spring Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Carter Road; thence from said point in a generally easterly direction being four hundred feet south of and parallel to the southern right-of-way of Spring Road to a point four hundred feet west of the western right-of-way of County Home Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Spring Road; thence from said point in a generally southwesterly direction and being four hundred feet northwest of and parallel to the northwestern right-of-way of County Home Road to a point four hundred feet northwest of its intersection of the northern right-of-way of Sims Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Sims Road; thence from said point in a generally westerly direction and being four hundred feet north of and parallel to the northern right-of-way of Sims Road to a point four hundred feet north of the end of the northern right-of-way of Sims Road; said point being four hundred feet north of and perpendicular to the northern right-of-way of Sims Road; thence from said point south about eight hundred sixty feet to a point four hundred feet south of the southern right-of-way for Sims Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Sims Road; thence from said point in a generally easterly direction and being four hundred feet south of and parallel to the southern right-of-way of Sims Road to a point four hundred feet northwest of the northwest right-of-way of County Home Road; said point being four hundred feet southwest of and perpendicular to the southern right-of-way of Sims Road; thence from said point in a generally southwesterly direction and being four hundred feet northwest of and parallel to the northwest right-of-way of County Home Road to a point four hundred feet northwest of the northern right-of-way of Sunset View Road; said point being four hundred feet northwest of and perpendicular to the northern right-of-way of Sunset View Road; thence from said point in a generally westerly direction and being four hundred feet north of and parallel to the northern right-of-way of Sunset View Road to a point four hundred feet north of the end of the northern right-of-way of Sunset View Road; said point being four hundred feet north of and perpendicular to

the northern right-of-way of Sunset View Road; thence from said point about eight hundred sixty feet south to a point four hundred feet south of the southern right-of-way of Sunset View Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Sunset View Road; thence from said point in a generally easterly direction and being four hundred feet south of and parallel to the southern right-of-way for Sunset View Road to a point four hundred feet west of its intersection with the western right-of-way of County Home Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Sunset View Road; thence from said point in a generally southerly direction and being four hundred feet west of and parallel to the western right-of-way of County Home Road to a point four hundred feet north of its intersection with the northern right-of-way of Vernon Road; said point being four hundred feet west of and perpendicular to the western right-of-way of County Home Road; thence from said point about eight hundred sixty feet south to a point four hundred feet south of the southern right-of-way of Vernon Road; said point being four hundred feet south of and perpendicular to the southern right-of-way of Vernon Road; thence from said point in a generally easterly direction and being four hundred feet south of and parallel to the southern right-of-way of Vernon Road to the point of beginning.

"Sec. 2.2. (a) An annexation ordinance adopted by the Town of Wentworth under G.S. 160A-49(e) or G.S. 160A-37(e) shall become effective only if approved by the voters of the area to be annexed in a referendum conducted under subsection (b) of this section.

(b) The town council shall order the Rockingham County Board of Elections to call an election to determine whether or not the proposed territory shall be annexed to the town. Within 90 days after receiving such order from the town council, the county board of elections shall proceed to hold an election on the question.

Such election shall be called by a resolution or resolutions of said county board of elections which shall:

(1) Describe the territory proposed to be annexed to the said city or town as set out in the order of the said local governing body;

(2) Provide that the matter of annexation of such territory shall be submitted to the vote of the qualified voters of the territory proposed to be annexed; and

(3) Provide for registration of voters in the territory proposed to be annexed for said election in accordance with G.S. 163-288.2.

Said resolution shall be published in one or more newspapers of the said county once a week for 30 days prior to the closing of the registration books. All costs of holding such election shall be paid by the town. Except as herein provided, the election shall be held under the same statutes, rules, and regulations as are applicable to elections in the town.

At such election the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Annexation."

If at the election a majority of the votes cast from the area proposed for annexation shall be 'For Annexation', the annexation ordinance shall become effective as provided by Article 4A of Chapter 160A of the General Statutes, but not prior to the date of certification of the results of the election.

"Sec. 2.3. The Town of Wentworth may not annex any territory east of the following line:

Beginning at a point in the centerline of the Iron Works Road; said point being westerly and 400 feet perpendicular to the western right-of-way of Woolen Store Road Extended to the centerline of the Iron Works Road; thence from said point northerly about 430 feet to a point; said point being 400 feet perpendicular to and northerly from the northern right-of-way of the Iron Works Road; thence from said point in a generally northeasterly direction and being 400 feet parallel to the northern right-of-way of the Iron Works Road and Sandy Cross Road to a point in the centerline of NC Hwy. 65 and 87; said point being 400 feet perpendicular to and westerly from the northern right-of-way of Sandy Cross Road Extended to the centerline of NC Hwy. 65 and 87; thence from said point, westerly with the centerline of NC Hwy. 65 and 87 about 50 feet to a point; thence from said point in a northeasterly direction about 450 feet to a point; said point being 400 feet perpendicular to and northeasterly from the northern right-of-way of NC Hwy. 65 and 87 and 400 feet perpendicular to and northwesterly from the northern right-of-way of Wentworth Street; thence from said point 400 feet parallel to the northern right-of-way of Wentworth Street and running in a generally northeasterly direction to a point; said point being about 200 feet east of Setliff Road and 400 feet north of Wentworth Street; thence in a northerly direction about 2100 feet to the northeast corner of lot 7 of the Setliff Glenn Subdivision (MB 28-275); said point located about 850 feet east of the cul-de-sac at the end of Setliff Road; thence northeasterly about 2030 feet to a point at the corner of the University Estates Subdivision; thence easterly about 2000 feet along the southeasterly boundary line of the University Estates Subdivision to a point near Cedar Lane which intersects the boundary of the existing Wentworth Fire District boundary line; thence northerly along the Wentworth Fire District line about 5500 feet to a point; said point being about 400 feet south of the intersection of NC 1992 and Berrymore Road; thence parallel to and 400 feet from and on the southeast side of Berrymore Road to a point; said point being on NC 14 about 400 feet southeast of the intersection of Berrymore Road and NC 14.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. The governing body of the Town of Wentworth is the Town Council, which has five members.

"Sec. 3.2. The qualified voters of the entire Town elect the members of the Town Council.

"Sec. 3.3. From the effective date of this Charter until the organizational meeting of the Town Council after the 1999 municipal election, the members of the Town

Council shall be Cassandra Broadnax, Evelyn Conner, George Murphy, Larry Terrell, and Dennis Paschal.

"Sec. 3.4. At the regular town election in 1999, five Town Council members shall be elected. The persons receiving the three highest numbers of votes shall be elected for four-year terms, and the two persons receiving the next highest numbers of votes shall be elected for two-year terms. In 2001 and quadrennially thereafter, two Town Council members shall be elected for four-year terms. In 2003 and quadrennially thereafter, three Town Council members shall be elected for four-year terms.

"Sec. 3.5. At the organizational meeting of the initial Town Council and at the organizational meeting after each election, the council shall elect one of its members to serve at its pleasure as Mayor.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. The Town Council shall be elected on the nonpartisan basis and the results determined by plurality in accordance with G.S. 163-292.

"Sec. 4.2. Elections shall be conducted in accordance with Chapter 163 of the General Statutes.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. The Town of Wentworth shall operate under the mayor-council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. From and after the effective date of the revival of the Charter, the citizens and property in the Town of Wentworth shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall obtain from Rockingham County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998.

Section 3. (a) The Rockingham County Board of Elections shall conduct an election on November 4, 1997, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of Wentworth, the question of whether or not the Charter of the Town of Wentworth should be revived and new boundaries established. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Amendment of the Charter of the Town of Wentworth and establishment of new boundaries for the town."

Section 4. In such election, if a majority of the votes cast shall be cast "FOR Amendment of the Charter of the Town of Wentworth and establishment of new boundaries for the town", then Sections 1 and 2 of this act become effective July 1, 1998. Otherwise, those sections have no effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 696

Short Title: 3rd Senate District Local Act. (Local)

Sponsors: Senator Perdue.

Referred to: Rules and Operations of the Senate.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO THE 3RD DISTRICT OF THE SENATE.

The General Assembly of North Carolina enacts:

Section 1. This act relates to the 3rd Senate District only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 696
Proposed Committee Substitute S696-PCSA767

Short Title: Grantsboro Incorporated. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF GRANTSBORO.

The General Assembly of North Carolina enacts:

Section 1. A Charter of the Town of Grantsboro is enacted as follows:

"THE CHARTER OF THE TOWN OF GRANTSBORO.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1-1. **Incorporation.** The inhabitants of the Town of Grantsboro are a body corporate and politic under the name 'Town of Grantsboro'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2-1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Grantsboro are as follows:

Beginning at the intersection of the centerline of the right-of-way of NC 55 and the western boundary of the corporate limits of the City of Alliance, and running thence in a southerly direction, contiguous with the corporate limits of Alliance, to a point on the South Prong of Bay River, south of Bay River Road (NCSR 1347);

Thence in a southwest direction along the South Prong of Bay River to the western boundary of Tax Parcel 14, Property of Jeffrey and Billy H. Holton as recorded on Tax Map F05 in DB 304, page 202;

Thence north along the western boundary of Tax Parcel 14 for 300 feet, more or less, to the northeast corner of Tax Parcel 34, Property of Rhoda Scott Dixon on Tax Map F051 in DB 170, page 181;
Thence westwardly along the northern boundary of Tax Parcel 34 to a point 1,000 feet east of the centerline of NC 306;
Thence in a southerly direction along a line parallel to and 1,000 feet east of the centerline of NC 306 to the southern boundary of Tax Parcel 52, Property of Geneva Parsons' Heirs on Tax Map F052, in DB 99, page 264;
Thence west along the southern boundary of Tax Parcel 52 to the centerline of NC 306;
Thence south 150 feet, more or less, along the centerline of NC 306 to the intersection of the centerlines of NC 306 and Scott's Store Road (NCSR 1108);
Thence west along the centerline of Scott's Store Road to Deep Run Branch;
Thence along the center of Deep Run Branch 1,250 feet, more or less, in a northwesterly direction to the northwest corner of Tax Parcel 19, Property of M.T. Whitford on Tax Map E05 in DB 124, page 271;
Thence in an easterly direction along the northern boundary of Tax Parcels 19, 15, 14, all on Tax Map E05, and Tax Parcels 33 and 37, both on Tax Map F052, to a point 1,000 feet west of NC 306;
Thence north along a line parallel to and 1,000 feet west of NC 306 to the southern edge of the Tideland EMC right-of-way which follows the old Bay River Road roadbed west of NC 306 to Keys Town Road (NCSR 1106);
Thence along the southern boundary of the Tideland EMC right-of-way to Keys Town Road;
Thence, 1,200 feet south, more or less, to a forest access road and the northwest corner of Tax Parcel 92, Property of Nora M. Lawson and Angelo B. Murrell on Tax Map E05 in DB 215, page 149;
Thence eastwardly along the northern boundary of Tax Parcels 92 and 93, both on Tax Map E05, to the northeast corner of 93;
Thence south along the eastern boundary of Tax Parcels 93, 89, 78, and 74, all on Tax Map E05, to the southeast corner of 74;
Thence westwardly along the southern boundary of Tax Parcels 74, 72 and 102, all on Tax Map E05, to Goose Creek;
Thence north along the center of Goose Creek to the centerline of NC 55;
Thence eastwardly 2,100 feet, more or less, along the centerline of NC 55 to the intersection of Tax Parcel 12, Property of Booker T. and Loretta Jones on Tax Map E05, DB 235, page 774 and the right-of-way of NC 55;
Thence in a northeast direction along the common boundary of Tax Parcels 12 and 14, both on Tax Map E04, and 65 on Tax Map E05 to Tax Parcel 13 on Tax Map E04;
Thence in a northwesterly and northeasterly direction around the perimeter of Tax Parcel 13 to a point on the southern boundary of Tax Parcel 31, Property of Weyerhaeuser Co. on Tax Map E04, DB 110, page 550;

Thence around the perimeter of Tax Parcel 31 in an easterly and northerly direction to Tax Parcel 3, Property of PCS Phosphate on Tax Map E03 in DB 305, page 831 at a point 950 feet west, more or less, from NC 306;
Thence across Tax Parcel 3 in a northerly direction to the southeast corner of Tax Parcel 33, Morris Logging Co. on Tax Map F041;
Thence along the common boundary of Tax Parcels 33 and 3 in a westwardly direction to the southwest corner of 33;
Thence along the eastern boundary of Tax Parcel 3 in a northerly direction to the northwest corner of Tax Parcel 42, Property of Bay Creek Trucking Inc. on Tax Map E031 in DB 275, page 795;
Thence east, 1000 feet, more or less, along the northern boundary of Tax Parcel 42 to the centerline of NC 306;
Thence southwardly 700 feet, more or less, along the centerline of NC 306 to a point which is the northern boundary of Tax Parcel 43 on Tax Map E031 extending to said road right-of-way;
Thence east along the northern boundary of Tax Parcels 43, 46, 47, 48, 48-1, all on Tax Map E031, to the northeast corner of 48-1;
Thence south along the eastern boundary of Tax Parcels 48-1, 49, 54, 57, 58, 61 and 62, all on Tax Map E031, to the southeast corner of 62;
Thence westwardly along the southern boundary of Tax Parcel 62 to the northeastern corner of Tax Parcel 68 on Tax Map E031;
Thence south along the eastern boundary of Tax Parcels 68, 77, 79, and 86, all on Tax Map E031, to the centerline of Paul's Farm Road (NCSR 1243);
Thence east along the centerline of NCSR 1243 to the eastern boundary of CP&L Transmission Lines right-of-way;
Thence south, southeast and east along the eastern and northern boundary of the CP&L Transmission Lines right-of-way to the corporate limits of the City of Alliance;
Thence south along the western boundary of the corporate limits of the City of Alliance to the centerline of NC 55 and the starting point.
All descriptions are based on maps in the Pamlico County Tax Office as of March 6, 1997.

In the event that any of the territory described above is, on the date this Charter becomes effective, within the corporate limits of another town, or is subject to an annexation ordinance of another town that has been adopted but is not yet effective, this Charter removes that territory from the corporate limits of that other town.

"CHAPTER III.

"GOVERNING BODY.

"Section 3-1. **Structure of the Governing Body; Number of Members.** The governing body of the Town of Grantsboro is the Town Council which has five members.

"Section 3-2. **Manner of Electing Council.** The qualified voters of the entire town nominate and elect the Council.

"Section 3-3. **Term of Office of Council Members.** Members of the Council are elected to two-year terms in 1997 and biennially thereafter.

"Section 3-4. **Mayor; Term of Office.** The Mayor shall be elected by the qualified voters of the Town in 1997 and biennially thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Section 4-1. **Elections.** Council members shall be elected on a plurality basis and the results determined in accordance with G.S. 163-292.

"Section 4-2. **Results.** Election results shall be determined by the Pamlico County Board of Elections according to Chapter 163 of the General Statutes.

"CHAPTER V.

"ADMINISTRATION.

"Section 5-1. **Mayor-Council Plan.** The Town of Grantsboro shall operate under the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5-2. **Taxation and Funds.** The Town of Grantsboro is eligible to receive distributions of State funds during the fiscal year 1997-98."

Section 2. (a) From and after the effective date of this act, the citizens and property in the Town of Grantsboro shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain from Pamlico County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1997; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) If the effective date of this act is before July 1, 1997, the Town may adopt a budget ordinance for fiscal year 1996-97 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the act insofar as is practical. The Town may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1997.

Section 3. Notwithstanding Sections 3-3 and 3-4 of the Charter of the Town of Grantsboro as set out in Section 1 of this act, the Pamlico County Board of Elections shall conduct the 1997 general election for Town Council and Mayor of Grantsboro at the same time as the incorporation referendum provided for by Section 4 of this act. In the election, if a majority of the votes are cast "FOR incorporation of the Town of Grantsboro", the persons elected shall serve terms ending at the organizational meeting after the 1999 municipal election. The Pamlico County Board of Elections shall adopt a special filing period for the election. As absentee balloting is allowed by law for the incorporation referendum under G.S. 163-302, it shall also be allowed for election of officers at that election. In the election, if a majority of the votes are not cast "FOR incorporation of the Town of Grantsboro", then the election of Town Council and Mayor is void.

Section 4. (a) The Pamlico County Board of Elections shall conduct an election on a date set by the Pamlico County Board of Elections for the purpose of submission to the qualified voters of the area described in Section 2-1 of the Charter of the Town of Grantsboro the question of whether or not such area shall be incorporated as the Town of Grantsboro. The date of the election shall be not less than 60 days nor more than 90 days after the date this act becomes law. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Incorporation of the Town of Grantsboro".

Section 5. In the election, if a majority of the votes are cast "FOR incorporation of the Town of Grantsboro", Sections 1 and 2 of this act become effective on the date of the certification of the results of the election. Otherwise, Sections 1 and 2 of this act have no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 463
Committee Substitute Favorable 4/2/97

Short Title: Farm Products Weight Exemption. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PERMISSIBLE WEIGHT OF AGRICULTURAL CROPS THAT MAY BE TRANSPORTED ON THE HIGHWAYS FROM THE FIELD TO LOCAL MARKETS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-118(c)(12) reads as rewritten:

"(12) Subsections (b) and (e) of this section do not apply to a vehicle that ~~meets one of the following descriptions,~~ (i) is hauling agricultural crops from the farm where they were grown to first market, (ii) is within 35 miles of that farm, (iii) does not operate on an interstate highway or posted bridge while hauling the crops, ~~and does not exceed its registered weight.~~ and meets one of the following descriptions:

a. Is a five-axle combination with a gross weight of no more than ~~88,000~~ 90,000 pounds, a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

c. Is a four-axle combination with a gross weight that does not exceed the limit set in subdivision (b)(3) of this section, a

single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds."

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

EXPLANATION OF HOUSE BILL 463 (CS):
Farm Products Weight Exemption

TO: House Senate Committee
FROM: Martha Walston, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative Owens

House Bill 463 amends the motor vehicles statute regarding weight of vehicles operating on the highways of the State by increasing the permissible weight of a vehicle transporting agricultural crops from the farm where they were grown to first market. The current law permits a vehicle with a five-axle combination with a gross weight of no more than 88,000 pounds. House Bill 463 increases the gross weight to no more than 90,000 pounds. "Gross weight" is defined as the weight of any single axle, tandem axle, or axle group of a vehicle or combination of vehicles plus the weight of any load thereon. The current law requires that market be within 35 miles of where the crops are grown and that the vehicle not be operated on an interstate highway while hauling the crops. House Bill 463 also prohibits the operation of the vehicle on a posted bridge while hauling crops.

The bill is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

DATE: July 15, 1997

TO: Senate Finance Committee

FROM: Karl Knapp
Fiscal Research Division

RE: Fiscal Impact of HB 463

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Overweight Penalties	Estimate of Revenue Loss Not Available				
EXPENDITURES					
Highway Maintenance	Estimate of Cost Increase Not Available				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Highways
Division of Motor Vehicles

EFFECTIVE DATE: Upon becoming law.

BILL SUMMARY: The proposed act increases from 88,000 to 90,000 the permissible weight of vehicles that are exempt from vehicle weight laws while transporting agriculture crops from the field first to market on non-interstate highways. The proposed act also prohibits these vehicles from traveling on a posted bridge.

ASSUMPTIONS AND METHODOLOGY: The Department of Transportation indicates that Increasing the weight of vehicles using State highways speeds up the rate at which those highways are damaged. Increased damage results in a greater maintenance requirement, but the Department of Transportation is unable to quantify the level of such a increase. An increase in the maximum weight would also reduce the number of overweight penalties issued to vehicles transporting crops. The Division of Motor Vehicles overweight penalties records are not kept at a sufficient level of detail to determine how many penalties are issued to vehicles in the 88,000 to 90,000 pound range.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 524*
Committee Substitute Favorable 6/23/97

Short Title: UNC Alcohol Ed. Endowment Fund. (Public)

Sponsors:

Referred to:

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CAP ON THE AMOUNT OF DRIVERS LICENSE RESTORATION FEES THAT ARE DEPOSITED IN A FUND FOR ALCOHOL STUDIES ENDOWMENT AT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-7(i1) reads as rewritten:

"(i1) Restoration Fee. -- Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of twenty-five dollars ($25.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of fifty dollars ($50.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ~~five~~ ten million dollars ~~($5,000,000),~~ ($10,000,000), and shall pay a restoration fee of twenty-five dollars ($25.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The twenty-five dollar ($25.00) fee, and the first twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee shall be deposited in the General

Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ~~five~~ ten million dollars ~~($5,000,000),~~ ($10,000,000), and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ~~five~~ ten million dollars ~~($5,000,000).~~ ($10,000,000)."

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

EXPLANATION OF HOUSE BILL 524:
UNC Alcohol Ed. Endowment Fund (2nd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative Morris

House Bill 524 increases the cap on the amount of drivers license restoration fees that are credited to the Center for Alcohol Studies Endowment Fund from $5 million to $10 million. The interest earned by the Endowment Fund is used to support the Skipper Bowles Center for Alcohol Studies. The money the Center receives from the Endowment Fund makes up less than 11% of its annual budget. The Center's mission is to conduct, coordinate, and promote basic and clinical research on the causes, prevention, and treatment of alcoholism and alcohol abuse.

In 1989, the General Assembly increased the amount of the motor vehicle restoration fee for revocations for offenses involving impaired driving from $25 to $50. The first $25 of this fee, as well as all other revocation fees, is credited to the Highway Fund. The $25 increase in the fee is credited to the General Fund and appropriated to the Center for Alcohol Studies Endowment Fund. The $25 from the restoration fee for restorations for offenses involving impaired driving has generated approximately $3.4 million. Under current law, the restoration fee will revert back to $25 when the amount of money generated from the fee increase equals $5 million.

When the General Assembly increased the fee, it stated its intent to annually appropriate the revenue generated by the increased fee to the Endowment Fund, but not to exceed a cumulative total of $5 million. However, the General Assembly has chosen to appropriate more money to the Endowment Fund over the years than the fee has generated. Including the amount appropriated in this year's proposed budget, the General Assembly has appropriated $5 million for the Center for Alcohol Studies Endowment since 1991-92.

Under the statement of intent in G.S. 20-7, the General Assembly has appropriated all it has intended to appropriate for this purpose. However, the $50 fee will continue to be collected until the amount collected under the $25 increase equals $5 million. That will probably not occur until 1999-2000. This bill resolves this conflict by providing that the fee will remain at $50 until the amount collected from the $25 increase equals or exceeds $10 million.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 524
SHORT TITLE: UNC Alcohol Education Endowment Fund
SPONSOR(S): Proposed Committee Substitute

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	**See section on assumption and methodology**				
EXPENDITURES	No effect on the continuation budget				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	UNC Center for Alcohol Studies Endowment				
EFFECTIVE DATE:	When it becomes law				

BILL SUMMARY:
The proposed act increases the cap on the amount of drivers license restoration fees that are deposited into the fund for the Center for Alcohol Studies Endowment at the University of North Carolina at Chapel Hill. The act also provides that the money deposited in the General Fund for this purpose shall not be appropriated to the Center until the amount deposited in the General Fund, from the restoration fee, equals or exceeds the cumulative amount appropriated to the Center as of July 1, 1998. The cap is increased from $5 million to $10 million.

ASSUMPTIONS AND METHODOLOGY:
In 1989, the General Assembly increased the restoration fee on drivers' whose license had been revoked from $25.00 to $50.00. The increase was devoted to the UNC Center for Alcohol Studies until the cumulative total reached $5 million; at which time the restoration fee would revert to $25.00. Since 1989 the devoted revenue, from the restoration fee, has been deposited into the General Fund and an amount appropriated annually to the Endowment. As shown in the table below, the fund has received $5 million in General Fund appropriations while collections from the fee have totaled $3.37 million.

(For summary of receipts see Table I.)

TABLE I

Fiscal Year	Funding History	DWI Restoration Fee
1990-91	$0	$288,862
1991-92	$1,615,000	$459,543
1992-93	$850,000	$493,713
1993-94	$700,000	$537,866
1994-95	$700,000	$551,153
1995-96	$500,000	$580,722
1996-97	$500,000	$461,545 **
1997-98 *	$135,000	
1998-99 *		
Totals	$5,000,000	$3,373,404

*** Contained in SB 352 Senate and House versions a/o 6/4/97**
**** Receipts through 4/30/97**

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk
APPROVED BY:
DATE: July 11, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 524*

Committee Substitute Favorable 6/23/97

Short Title: UNC Alcohol Ed. Endowment Fund. (Public)

Sponsors:

Referred to:

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CAP ON THE AMOUNT OF DRIVERS LICENSE RESTORATION FEES TI ARE DEPOSITED IN A FUND FOR ALCOHOL STUDIES ENDOWMENT AT THE UNIVERSITY OF NOR CAROLINA AT CHAPEL HILL.

Additional Information Available on: Bill Status

Section 1. G.S. 20-7(il) reads as rewritten:

"(il) Restoration Fee. -- Any person whose drivers license has been revoked pursuant to the provisions of this Chapter, other than G.S. 20-17(2), shall pay a restoration fee of twenty-five dollars ($25.00). A person whose drivers license has been revoked under G.S. 20-17(2) shall pay a restoration fee of fifty dollars ($50.00) until the end of the fiscal year in which the cumulative total amount of fees deposited under this subsection in the General Fund exceeds ~~five~~ *ten* million dollars ~~($5,000,000),~~ *($10,000,000),* and shall pay a restoration fee of twenty-five dollars ($25.00) thereafter. The fee shall be paid to the Division prior to the issuance to such person of a new drivers license or the restoration of the drivers license. The restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter. The twenty-five dollar ($25.00) fee, and the first twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee, shall be deposited in the Highway Fund. The remaining twenty-five dollars ($25.00) of the fifty-dollar ($50.00) fee shall be deposited in the General Fund of the State. The Office of State Budget and Management shall certify to the Department of Transportation and the General Assembly when the cumulative total amount of fees deposited in the General Fund under this subsection exceeds ~~five~~ *ten* million dollars ~~($5,000,000),~~ *($10,000,000),* and shall annually report to the General Assembly the amount of fees deposited in the General Fund under this subsection.

It is the intent of the General Assembly to annually appropriate the funds deposited in the General Fund under this subsection to the Board of Governors of The University of North Carolina to be used for the Center for Alcohol Studies Endowment at The University of North Carolina at Chapel Hill, but not to exceed this cumulative total of ~~five~~ *ten* million dollars ~~($5,000,000).~~ *($10,000,000).* "

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

An important information bulletin for NC Legislators
from the Skipper Bowles Center for Alcohol Studies

In North Carolina each year problems associated with alcohol and drug abuse cost more than $5.5 billion. *Your support of HB 524 will guarantee that "abuser fees" paid by convicted drunk drivers will continue to be invested in critical research on alcoholism and drug addiction through the Skipper Bowles Center for Alcohol Studies.*

In fact there is legislation already in place which has set up an endowment fund through the $25 portion of the license restoration fee paid by driver's convicted of driving while impaired. The moneys collected are placed in the General Fund and appropriated to the endowment fund.

The Center for Alcohol Studies only receives the interest earned by the endowment fund. This makes up less than 11% of the Center's total annual budget, most of which comes from Federal grants. HB 524 extends the total amount of funds for the endowment from $5 million to $10 million because of the growing cost of medical research. The only way the fund can grow is by "abusers" paying to have their licenses renewed. *Let the people with the problem help solve one of North Carolina's most costly problems.*

The Skipper Bowles Center for Alcohol Studies' mission is to conduct, coordinate and promote basic and clinical research on the causes, prevention and treatment of alcoholism and alcohol abuse. For more than 26 years the Center for Alcohol Studies has been a leader in the search for the causes and prevention of alcoholism and has worked to improve intervention and treatment for alcohol abuse and alcoholism, including

The discovery that alcohol has unique actions on different brain regions which most likely underlie the development of alcoholism. ***This is an important and promising area of research in which the Center for Alcohol Studies is an active participant.***

The development of a simple and highly effective diagnostic tool, known as the CAGE, to identify alcoholism without putting people on the defensive or prompting denial. For more than 20 years the CAGE has been taught to medical students, physicians and other health care professionals. It has been utilized in many health care settings around the world. ***The Center for Alcohol Studies continues to train health care professionals to diagnose alcoholism and to detect alcohol abuse.***

Contributions in the discovery of medications which can reduce relapse rates by turning off the brain's reward center to reduce craving. More than a decade after the Center's first studies in this area ReVia (naltrexone) was given FDA approval -- the first drug approved for the treatment of alcoholism since Antabuse. ***The Center for Alcohol Studies is dedicated to improving treatment outcomes for persons with alcoholism.***

For more information contact: Skipper Bowles Center for Alcohol Studies, (919) 966-5678
CB# 7178, Chapel Hill, North Carolina 27599-7178, http://www.med.unc.edu/alcohol/

When your constituents ask you what you have done to help solve the alcohol and drug problem, you can tell them you voted to support the Center for Alcohol Studies which is working to continue to find more effective treatments,and even possibly, a cure. And a cure for alcohol addiction will likely lead to a cure for all drug addictions.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 408
Committee Substitute Favorable 5/15/97

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

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

heating systems or equipment or which, by its installation, may alter or affect the fuel supply to plumbing or heating systems or equipment within the meaning of G.S. 87-21(a).

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

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

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

sprinkler contracting or may accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout.

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

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

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

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

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

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

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

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

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

EXPLANATION OF HOUSE BILL 408 (CS):
Plumbing/Heating Contractors (Agency Bill)

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative Ives

House Bill 408 would require the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler contractors to issue, effective April 15, 1998, a new fuel piping license to persons who do not have a current plumbing or heating license, but who desire to engage in the contracting or installing of fuel piping extending from an approved fuel source at or near the premises and which piping is used to supply fuel to plumbing or heating systems or equipment. Under current law, the Board has two classes of licenses:

- Class I covering all plumbing, heating, and fire sprinkler systems for all structures.
- Class II covering plumbing and heating systems in single-family detached residential dwellings.

The Bill would also allow the Board to establish additional restricted classifications to provide for licensure to engage in the following: (1) a specific phase of heating, plumbing, or fire sprinkling contracting, (2) a specific phase of heating, plumbing, or fire sprinkling contracting that is an incidental part of their primary business, which is a lawful business other than heating, plumbing, or fire sprinkling contracting, or (3) contracting and installing fuel piping from an approved fuel source on the premises to a point inside the residence.

The annual fee for the new fuel piping license or restricted classification license will not exceed the cost for a plumbing or heating license. The current cost for a plumbing or heating license may not exceed $75.00 in cities or towns of 10,000 inhabitants or more, and may not exceed $50.00 in cities or towns of less that 10,000 inhabitants.

Counsel to the Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors has stated that a license as a plumbing or heating contractor is required for the gas piping which carries natural gas or propane from a connection point outside the building to the furnace, water heater or other plumbing or heating equipment which uses gas fuel. The Board has determined that a number of dealers in propane or natural gas fuel have been doing this piping work illegally. The bill would allow a propane dealer or natural gas installer to obtain a limited license for the purpose of installing the gas piping.

The act becomes effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 408 (First Edition)

SHORT TITLE: Plumbing/Heating Contractors/AB

SPONSOR(S): Rep. Ives

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Special Revenue Fund	$35,880	$35,880	$35,880	$35,880	$35,880
EXPENDITURES					
Special Revenue Fund	NA	NA	NA	NA	NA

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Examiners of Plumbing, Heating , and Fire Sprinkler Contractors

EFFECTIVE DATE: The act is effective when it becomes law. The fuel piping and restricted licenses are effective April 15, 1998.

BILL SUMMARY: The bill creates a new fuel piping license for persons who contract or install piping from an approved fuel source, such as natural gas or propane, to plumbing or heating systems or equipment. The bill also allows more restrictive licenses for persons engaged in specific phases of heating, plumbing or fire sprinkling contracting. The fee for these new licenses may not exceed the cost of a plumbing or heating license.

ASSUMPTIONS AND METHODOLOGY: The Executive Secretary of the State Board of Examiners of Plumbing, Heating , and Fire Sprinkler Contractors, Mr. Tom Phillips, believes those most likely to apply for this new fuel piping license will be members of the North Carolina Propane Gas Association. (Mr. Phillips believes most workers in natural gas companies currently buy a plumbers license.) This fiscal note assumes that each of the 500 plus retail propane outlets in the state will buy a fuel piping license to cover their employees. The annual

fee for a fuel piping license cannot exceed the cost of a plumbing or heating license. The Board charges $75 for a statewide license and $45 for a local license. This note assumes the Board will charge the same rate for the new fuel piping license. The Board reports that 89.3% of the plumbers pay $75 for a statewide license and 10.7% buy a local license. This note assumes the same ratio for the 500 new fuel piping licenses. The revenue from the licenses is calculated as follows:

89.3%	X	500	X	$75	=	$33,450
10.7%	X	500	X	$45	=	$ 2,430
						$35,880

BUDGET NOTE: The fund balance in the operating account of the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors was $619,494 in 1996.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington**TomC**
DATE: May 14, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1158
Committee Substitute Favorable 5/14/97

Short Title: Reduce Property Tax for Antique Planes. (Public)

Sponsors:

Referred to:

April 24, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ANTIQUE AIRPLANES SHALL BE VALUED AT NO MORE THAN FIVE THOUSAND DOLLARS FOR PROPERTY TAX PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.12. Antique airplanes.**

(a) For the purpose of this section, the term 'antique airplane' means an airplane that meets all of the following conditions:

(1) It is registered with the Federal Aviation Administration and is a model year 1954 or older.

(2) It is maintained primarily for use in exhibitions, club activities, air shows, and other public interest functions.

(3) It is used only occasionally for other purposes.

(4) It is used by the owner for a purpose other than the production of income.

(b) Antique airplanes are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. An antique airplane shall be assessed at the lower of its true value or five thousand dollars ($5,000)."

Section 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 1998.

EXPLANATION OF HOUSE BILL 1158:
Reduce Property Tax for Antique Planes (2nd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative R. Hunter

House Bill 1158 will grant similar property tax relief to owners of antique airplanes that the 1995 General Assembly gave to owners of antique automobiles. Under the bill, antique airplanes owned by collectors will be assessed at the lower of their true value or $5,000, effective for taxable years beginning on or after July 1, 1998.

An airplane qualifies for this exemption if it meets all of the following conditions:

1. It is registered with the Federal Aviation Administration.
2. It is a model year 1954 or older.
3. It is maintained primarily for use in exhibitions, club activities, air shows, and other public interest functions.
4. It is used only occasionally for other purposes.
5. It is used by the owner for a purpose other than the production of income.

Non-business property has been exempt from property taxes since 1987. Non-business property means personal property that is used by the owner of the property for a purpose other than the production of income and that is not used in connection with a business. The term includes collectibles such as antiques, coins, and paintings. However, the term does not include aircraft.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1158
SHORT TITLE: Reduce Property Tax for Antique Airplanes
SPONSOR(S): Representatives Hunter and Yongue

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Local	**Annual loss ($80,000) to ($61,800)**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local units of government that levy a property tax

EFFECTIVE DATE: Taxable years beginning on or after July 1, 1998

BILL SUMMARY: The proposed act defines antique aircraft as a special class of property for property taxation and establishes a maximum property value on aircraft that meet the definition. The maximum assessed value that can be placed on this type of property for property taxation is $5,000.

ASSUMPTIONS AND METHODOLOGY: In North Carolina there are approximately 600 aircraft that meet the definition of antique aircraft outlined in the bill. The estimated value of this property is $12.8 million dollars. Using an average tax rate of 64 cent per $100.00 in value, the property tax due in fiscal year 1997-98 is approximately $81,000. If the maximum value that can be placed on these 600 aircraft is $5,000, then the tax due for fiscal year 1997-98 is $19,200. The difference is $61,800.

The estimate is given in a range because some of the aircraft registered in the State could be valued greater than, as well as less than the actual listing on the property tax rolls. The values, used in determining the aircraft registered in the State, are derived from aviation trade publications used nationwide to value aircraft property where ever located.

Data Source:
Air-Pack is an aviation publication company in Edmond Oklahoma that records historic aircraft registered throughout the country.

FISCAL RESEARCH DIVISION
PREPARED BY: Warren Plonk
APPROVED BY:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1108
Committee Substitute Favorable 5/22/97
Committee Substitute #2 Favorable 6/12/97

Short Title: Brew on Premises Permits. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR "BREW ON PREMISES" BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. -- It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic ~~beverage;~~ beverage, except equipment and ingredients provided under a Brew on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic ~~beverage.~~ beverage, except pursuant to a Brew on Premises permit.

(b) Unlawful Manufacturing. -- Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic ~~beverage~~ beverage, except at an establishment with a Brew on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. -- A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

Section 2. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $200.00.
(2) Off-premises malt beverage permit -- $200.00.
(3) On-premises unfortified wine permit -- $200.00.
(4) Off-premises unfortified wine permit -- $200.00.
(5) On-premises fortified wine permit -- $200.00.
(6) Off-premises fortified wine permit -- $200.00.
(7) Brown-bagging permit -- $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit -- $200.00.
(9) Limited special occasion permit -- $25.00.
(10) Mixed beverages permit -- $750.00.
(11) Culinary permit -- $100.00.
(12) Unfortified winery permit -- $150.00.
(13) Fortified winery permit -- $150.00.
(14) Limited winery permit -- $150.00.
(15) Brewery permit -- $150.00.
(16) Distillery permit -- $150.00.
(17) Fuel alcohol permit -- $50.00.
(18) Wine importer permit -- $150.00.
(19) Wine wholesaler permit -- $150.00.
(20) Malt beverage importer permit -- $150.00.
(21) Malt beverage wholesaler permit -- $150.00.
(22) Bottler permit -- $150.00.
(23) Salesman permit -- $25.00.
(24) Vendor representative permit -- $25.00.
(25) Nonresident malt beverage vendor permit -- $50.00.
(26) Nonresident wine vendor permit -- $50.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $25.00.
(28) Winery special event permit -- $100.00.
(29) Mixed beverages catering permit -- $100.00.
(30) Guest room cabinet permit -- $750.00.
(31) Liquor importer/bottler permit -- $250.00.
(32) Brew on Premises permit -- $200.00."

Section 3. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(14) Brew on Premises Permit. -- A permit may be issued to a business located in a jurisdiction where the sale of malt beverages is allowed and not located in a municipality in a dry county that has

a population of either 49,587 or 27,859 according to the 1990 United States Census, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in 27 C.F.R. § 25.205. A malt beverage produced under this subdivision may not contain more than six percent (6%) alcohol by volume.

The customer shall:

a. Select a recipe and kettle;

b. Weigh out the proper ingredients and add them to the kettle;

c. Transfer the wort to the fermenter;

d. Add the yeast;

e. Place the ingredients in a fermentation room; and

f. Filter, carbonate, and bottle the malt beverage.

The permittee may:

a. Assist the customer in all steps except adding the yeast; and

b. Transfer the ingredients from the fermentation room to the cold room."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1108
Committee Substitute Favorable 5/22/97
Committee Substitute #2 Favorable 6/12/97
Proposed Senate Committee Substitute H1108-PCSX2366

Short Title: Brew on Premises Permits. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS FOR "BREW ON PREMISES" BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-307 reads as rewritten:

"**§ 18B-307. Manufacturing offenses.**

(a) Offenses. -- It shall be unlawful for any person, except as authorized by this Chapter, to:

(1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic ~~beverage;~~ beverage, except equipment and ingredients provided under a Brew on Premises permit; or

(2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic ~~beverage.~~ beverage, except pursuant to a Brew on Premises permit.

(b) Unlawful Manufacturing. -- Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic ~~beverage~~ beverage, except at an establishment with a Brew on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. -- A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

Section 2. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $200.00.
(2) Off-premises malt beverage permit -- $200.00.
(3) On-premises unfortified wine permit -- $200.00.
(4) Off-premises unfortified wine permit -- $200.00.
(5) On-premises fortified wine permit -- $200.00.
(6) Off-premises fortified wine permit -- $200.00.
(7) Brown-bagging permit -- $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit -- $200.00.
(9) Limited special occasion permit -- $25.00.
(10) Mixed beverages permit -- $750.00.
(11) Culinary permit -- $100.00.
(12) Unfortified winery permit -- $150.00.
(13) Fortified winery permit -- $150.00.
(14) Limited winery permit -- $150.00.
(15) Brewery permit -- $150.00.
(16) Distillery permit -- $150.00.
(17) Fuel alcohol permit -- $50.00.
(18) Wine importer permit -- $150.00.
(19) Wine wholesaler permit -- $150.00.
(20) Malt beverage importer permit -- $150.00.
(21) Malt beverage wholesaler permit -- $150.00.
(22) Bottler permit -- $150.00.
(23) Salesman permit -- $25.00.
(24) Vendor representative permit -- $25.00.
(25) Nonresident malt beverage vendor permit -- $50.00.
(26) Nonresident wine vendor permit -- $50.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $25.00.
(28) Winery special event permit -- $100.00.
(29) Mixed beverages catering permit -- $100.00.
(30) Guest room cabinet permit -- $750.00.
(31) Liquor importer/bottler permit -- $250.00.
(32) Brew on premises permit -- $200.00."

Section 3. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(14) Brew on Premises Permit. -- A permit may be issued to a business, located in a jurisdiction where the sale of malt beverages is allowed, where individual customers who are 21 years old or older

may purchase ingredients and rent the equipment, time, and space to brew malt beverages for personal use in amounts set forth in 27 C.F.R. § 25.205. The customer must do all of the following:

a. Select a recipe and kettle.

b. Weigh out the proper ingredients and add them to the kettle.

c. Transfer the wort to the fermenter.

d. Add the yeast.

e. Place the ingredients in a fermentation room.

f. Filter, carbonate, and bottle the malt beverage.

A permittee may transfer the ingredients from the fermentation room to the cold room and may assist the customer in all the steps involved in brewing a malt beverage except adding the yeast. A malt beverage produced under this subdivision may not contain more than six percent (6%) alcohol by volume."

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

EXPLANATION OF HOUSE BILL 1108:
Brew on Premises Permits (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative McMahan

House Bill 1108 authorizing the Alcoholic Beverage Commission to issue "Brew on Premises" permits to a business located in a jurisdiction where the sale of malt beverages is allowed. The permit will allow businesses to sell ingredients and rent equipment, time, and space to individual adult customers to brew malt beverages for personal use. Without this change, a person may not possess and rent the equipment needed to manufacture alcoholic beverages. Under current law, a person may only possess the equipment if the person uses the equipment for personal use or is permitted as a manufacturer. The "Brew on Premises" permit fee is $200. The permit must be renewed annually. The renewal fee is 25% of the original application fee or $50. The bill is effective when it becomes law.

The proposed committee substitute removes the exceptions to the statewide applicability of the bill because they are unconstitutional. The North Carolina constitution prohibits local acts that regulate trade. The bill, in its 3rd Edition, is uniformly applicable in all jurisdictions that permit the sale of malt beverages except Columbus and Davie Counties. The exception for these two counties is a local restraint on trade that does not appear to have any rational basis.

Federal law permits adults to produce up to 100 gallons of wine and beer a year for personal use, or up to 200 gallons a year if there are two or more adults in the household, without paying the federal excise tax on alcoholic beverages. (27 C.F.R. § 25.205) North Carolina also permits individuals to produce wine and beer for personal use without obtaining a permit. The bill puts a provision in State law restricting the amount of beer a person may produce for personal use to the same amount allowed under federal law.

Since the business is not permitted to be a manufacturer of beer, the bill seeks to ensure that the customer is the person actually producing the beer by setting forth what the customer must do. The customer must select the recipe, add the yeast, filter and bottle the beer, and add any ingredients used to produce the beer. Although the permittee may offer advise and help, the permittee is specifically prohibited from adding the yeast.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1108
SHORT TITLE: Brew on Premises Permit
SPONSOR(S): Representative McMahan, et al.

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES General Fund	**$200.00**	**$2000.00**	**$2000.00**	**$2000.00**	**$2000.00**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: N. C. ABC Commission

EFFECTIVE DATE: When it become law

BILL SUMMARY: H 1108. BREW ON PREMISES PERMITS. Amends G.S. 18B-1001 to provide that in counties with a population of at least 500,000, the ABC Commission may issue a brew on premises permit for operation of a business where retail clients purchase ingredients and rent equipment to brew malt beverages for their personal use. The $200 fee is a onetime permit.

Source: Institute of Government

ASSUMPTIONS AND METHODOLOGY: There are two counties in the State that have populations greater than 500,000; Wake and Mecklenburg. The estimate assumes a maximum of 10 establishments annually could apply for the permit. At present there is one known establishment that plans to offer the services allowed under the permit authorized in this act.

Source: ABC Commission

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk
APPROVED BY:
DATE: June 2, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 886*
Transportation Committee Substitute Adopted 7/14/97

Short Title: Trucking Adjustment Act of 1997. (Public)

Sponsors:

Referred to: Finance.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE FOR A STUDY OF CERTAIN TRUCKING RELATED PROVISIONS BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-88 is amended by adding a new subsection to read:

"(l) The Division shall issue permanent truck and truck-tractor plates and shall include the word 'permanent' on the plate."

Section 2. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution.

b. Meats or agricultural crop products originating from a farm to first market.

c. ~~Unprocessed forest~~ Forest products originating from a farm or from woodlands to first market.

d. Livestock or poultry from their point of origin to first market.

e. Livestock by-products or poultry by-products from their point of origin to a rendering plant.

f. Recyclable material from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms 'recyclable' and 'processing' have the same meaning as in G.S. 130A-290(a).

g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term 'garbage' does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5."

Section 3. G.S. 20-116(d) reads as rewritten:

"(d) A single vehicle having two or more axles shall not exceed ~~35 feet in length~~ the following lengths of extreme overall dimensions inclusive of front and rear ~~bumpers.~~ bumpers:

Axles	Length
2	35 feet
3	40 feet
4 or more	45 feet

Provided, however, a bus or motor home with two axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers. ~~A single vehicle having three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers.~~ Provided, further, trucks transporting unprocessed cotton from farm to gin shall not exceed 48 feet in length overall of dimensions inclusive of front and rear bumpers. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes."

Section 4. G.S. 20-382.2 reads as rewritten:

"**§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.**

(a) Acts. -- A motor carrier who does any of the following is subject to a civil penalty of ~~seventy-five dollars ($75.00).~~ one thousand dollars ($1,000):

(1) Operates a for-hire motor vehicle in this State without registering its operations, as required by this Part.

(2) Operates a for-hire motor vehicle in interstate commerce in this State that does not carry a copy of either an insurance registration receipt issued to the motor carrier or a cab card with an

identification stamp issued for the vehicle, as required by G.S. 20-382.

(3) Operates a for-hire motor vehicle in intrastate commerce in this State for which it has not verified it has insurance, as required by G.S. 20-382.1.

(b) Payment. -- When the Division finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Division for a hearing.

(c) Hearing. -- Upon receiving a request for a hearing, the Commissioner ~~must~~ shall schedule a hearing within 30 days after receipt of the request. If after the hearing the Commissioner determines that the motor carrier was not liable for the penalty, the amount collected ~~must~~ shall be refunded. If after the hearing the Commissioner determines that the motor carrier was liable for the penalty, the motor carrier may bring an action in the Superior Court of Wake County against the Division for refund of the penalty. A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty.

(d) Proceeds. -- A penalty imposed under this section is payable to the Division. Penalties collected under this section shall be credited to the Highway Fund as nontax revenue."

Section 5. The Division of Motor Vehicles shall study the feasibility of establishing a staggered registration system for commercial motor vehicles under the International Registration Plan (IRP). The registration plan shall be coordinated with other states which currently stagger IRP registrations to eliminate, insofar as possible, multiple application dates for the same carrier. The registration plan shall provide for a smooth transition to the staggered system providing for credits and partial fees, as needed. The Division shall report the results of this study along with any legislation to implement the staggered registration system to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division by April 1, 1998.

Section 6. The Legislative Research Commission may study the following issues encouraging the growth of the trucking industry in North Carolina through increased truck registrations:

(1) The feasibility of removing the highway use tax on vehicles with a gross weight rating of more than 26,000 pounds;

(2) The replacement of the revenue from the removal of the highway use tax studied in subdivision (1) of this section by an increase in registration fees for the same vehicles by ten cents (10¢) per one hundred pounds of registered weight; and

(3) Eliminate the stacking of overweight penalties by restricting the penalties so that they do not exceed the highest axle-group weight that exceeds the allowable limits rather than assessing separate penalties for each axle-group and stacking those penalties for the same weight violations.

The Legislative Research Commission may make an interim report of the study authorized by this section to the 1998 Session of the General Assembly and may make a final report to the 1999 Session of the General Assembly.

Section 7. Sections 5, 6, and 7 of this act are effective when this act becomes law. Sections 1 through 4 of this act become effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 886*
Transportation Committee Substitute Adopted 7/14/97
Proposed Committee Substitute S886-PCS2788

Short Title: Trucking Adjustment Act of 1997. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE FOR A STUDY OF CERTAIN TRUCKING RELATED PROVISIONS BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-88 is amended by adding a new subsection to read:

"(l) The Division shall issue permanent truck and truck-tractor plates to Class A and Class B Motor Vehicles and shall include the word 'permanent' on the plate. The permanent registration plates issued pursuant to this section shall be subject to annual registration fees set in this section. The Division shall issue the necessary rules providing for the recall, transfer, exchange, or cancellation of permanent plates issued pursuant to this section."

Section 2. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution.
b. Meats or agricultural crop products originating from a farm to first market.
c. ~~Unprocessed forest~~ Forest products originating from a farm or from woodlands to first market.
d. Livestock or poultry from their point of origin to first market.
e. Livestock by-products or poultry by-products from their point of origin to a rendering plant.
f. Recyclable material from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms 'recyclable' and 'processing' have the same meaning as in G.S. 130A-290(a).
g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term 'garbage' does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5."

Section 3. G.S. 20-382.2 reads as rewritten:

"§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.

(a) Acts. -- A motor carrier who does any of the following is subject to a civil penalty of ~~seventy-five dollars ($75.00).~~ one thousand dollars ($1,000):

(1) Operates a for-hire motor vehicle in this State without registering its operations, as required by this Part.
(2) Operates a for-hire motor vehicle in interstate commerce in this State that does not carry a copy of either an insurance registration receipt issued to the motor carrier or a cab card with an identification stamp issued for the vehicle, as required by G.S. 20-382.
(3) Operates a for-hire motor vehicle in intrastate commerce in this State for which it has not verified it has insurance, as required by G.S. 20-382.1.

(b) Payment. -- When the Division finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not

jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Division for a hearing.

(c) Hearing. -- Upon receiving a request for a hearing, the Commissioner ~~must~~ shall schedule a hearing within 30 days after receipt of the request. If after the hearing the Commissioner determines that the motor carrier was not liable for the penalty, the amount collected ~~must~~ shall be refunded. If after the hearing the Commissioner determines that the motor carrier was liable for the penalty, the motor carrier may bring an action in the Superior Court of Wake County against the Division for refund of the penalty. A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty.

(d) Proceeds. -- A penalty imposed under this section is payable to the Division. Penalties collected under this section shall be credited to the Highway Fund as nontax revenue."

Section 4. The Division of Motor Vehicles shall study the feasibility of establishing a staggered registration system for commercial motor vehicles under the International Registration Plan (IRP). The registration plan shall be coordinated with other states which currently stagger IRP registrations to eliminate, insofar as possible, multiple application dates for the same carrier. The registration plan shall provide for a smooth transition to the staggered system providing for credits and partial fees, as needed. The Division shall report the results of this study along with any legislation to implement the staggered registration system to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division by April 1, 1998.

Section 5. The Joint Legislative Transportation Oversight Committee and the Revenue Laws Study Committee shall study the following issues encouraging the growth of the trucking industry in North Carolina through increased truck registrations:

(1) The feasibility of removing the highway use tax on vehicles with a gross weight rating of more than 26,000 pounds;

(2) The replacement of the revenue from the removal of the highway use tax studied in subdivision (1) of this section by an increase in registration fees for the same vehicles by ten cents (10¢) per 100 pounds of registered weight; and

(3) Eliminate the stacking of overweight penalties by restricting the penalties so that they do not exceed the highest axle-group weight that exceeds the allowable limits rather than assessing separate penalties for each axle-group and stacking those penalties for the same weight violations.

The Joint Legislative Transportation Oversight Committee may make an interim report of the study authorized by this section to the 1998 Session of the General Assembly and shall make a final report to the 1999 Session of the General Assembly.

Section 6. Sections 4 and 5 of this act are effective when this act becomes law. Sections 2 and 3 of this act become effective October 1, 1997. Section 1 of this act becomes effective January 1, 1999.

FISCAL ANALYSIS MEMORANDUM

DATE: July 2, 1997

TO: Senate Finance Committee

FROM: Karl Knapp
Fiscal Research Division

RE: Proposed Committee Substitute for SB 886 (PCS-2788)

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
HIGHWAY FUND					
Revenues					
Civil Penalties	$100,825	$100,825	$100,825	$100,825	$100,825
Expenditures					
Division of Motor Vehicles					
Permanent Truck Plates	$0	$41,668	-$42,174	-$42,174	-$42,174
Division of Highways					
Highway Maintenance	No Estimate of Cost Increase Available				

POSITIONS: None

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Highways
Division of Motor Vehicles

EFFECTIVE DATE: January 1, 1999 for permanent plate provisions. October 1, 1997 for the permanent plate, light traffic road, vehicle length, and civil penalty provisions. Upon becoming law for all other provisions.

BILL SUMMARY: The proposed act makes the following changes to current law:

1) Requires DMV to issue permanent truck and truck-tractor plates, rather than annual plates.
2) Exempts from light traffic road restrictions all vehicles carrying forest products from farm or forest to first market (was only unprocessed forest products).
3) Increases the civil penalty for failure to comply with registration or insurance verification requirements from $75 to $1,000.

In addition, the proposed act requires DMV to study the feasibility of implementing staggered registration for International Registration Plan vehicles, and allows the Legislative Research Commission to study the following issues:

1) The feasibility of exempting vehicles with a gross weight of 26,000 or more from the Highway Use Tax.
2) The feasibility of replacing this lost Highway Use Tax revenue through increased registration fees.
3) The elimination of penalties for truck axle-group overweight violations other than the penalty computed on the highest axle-group weight that exceeds the allowable limit.

ASSUMPTIONS AND METHODOLOGY:

Civil Penalties: During FY95-96, a total of 109 citations were issued for motor carrier insurance verification violations at various penalty levels. At $75 each, penalties totaling $8,175 would have been assessed. At $1,000 per citation, penalties would have been $109,000, for an increase of $100,825. This figure is not expected to change significantly in the future.

Permanent Plates: Permanent plates would not be issued until 1999. The cost of each current annual plate is $1.32. The cost of each permanent plate is $1.65.

Current Law:	126,268 annual plates at $1.32 = $166,674
Proposed FY98-99	126,268 permanent plates at $1.65 = $208,342
Proposed FY99-02	75,000 (inventory) @ $1.65 = $124,500

Highway Maintenance: The Division of Highways indicates that the proposed act's provisions related to light traffic road restrictions will increase the weight of vehicles on certain State highways, and that this increased weight will cause increased wear of those highways, requiring additional maintenance expenditures. The Division of Highways can not quantify the amount of additional maintenance expenditures that would required by the provisions of the proposed act.

TECHNICAL CONSIDERATIONS: None.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1121
Committee Substitute Favorable 5/14/97
Committee Substitute #2 Favorable 6/11/97

Short Title: Brownfields Property Reuse Act. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE SAFE REUSE OF PROPERTIES WHERE ACTUAL CONTAMINATION, OR THE POSSIBILITY OF CONTAMINATION, HAS IMPEDED REDEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Findings. -- The General Assembly makes the following findings:

(1) There are abandoned, idle, and underused properties in North Carolina, often referred to as "brownfields", that may have been or were contaminated by past industrial and commercial activities, but that are attractive locations for redevelopment.

(2) The reuse, development, redevelopment, transfer, financing, and other use of brownfields is impaired by the potential liability associated with the risk of contamination.

(3) The safe redevelopment of brownfields would benefit the citizens of North Carolina in many ways, including improving the tax base of local government and creating job opportunities for citizens in the vicinity of brownfields.

(4) Potential purchasers and developers of brownfields and other parties who have no connection with the contamination of the property, including redevelopment lenders, should be encouraged to provide capital and labor to improve brownfields without undue

risk of liability for problems they did not create, so long as the property can be and is made safe for appropriate future use.

(5) Public and local government involvement in commenting on the safe reuse of brownfields will improve the quality and acceptability of their redevelopment.

Section 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 5. Brownfields Property Reuse Act.

"**§ 130A-310.30. Short title.**

This Part may be cited as the Brownfields Property Reuse Act of 1997.

"**§ 130A-310.31. Definitions.**

(a) Unless a different meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and G.S. 130A-310 apply throughout this Part.

(b) Unless a different meaning is required by the context:

(1) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(2) 'Brownfields agreement' means an agreement between the Department and a prospective developer that meets the requirements of G.S. 130A-310.32.

(3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination and that is or may be subject to remediation under any State remedial program other than Part 2A of Article 21 of Chapter 143 of the General Statutes or that is or may be subject to remediation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.).

(4) 'Contaminant' means a regulated substance released into the environment.

(5) 'Current standards' when used in connection with 'cleanup', 'remediated', or 'remediation' means that cleanup or remediation activities at the site comply with generally applicable standards, guidance, or established methods governing contaminants at the site that are adopted or published by the Commission, the Environmental Management Commission, or the Department.

(6) 'Environmental contamination' means contaminants at the property requiring remediation and that are to be remediated under the brownfields agreement including, at a minimum, hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 130A-310; a hazardous substance, as defined in G.S. 143-215.77; or oil, as defined in G.S. 143-215.77.

(7) 'Local government' means a town, city, or county.

(8) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(9) 'Potentially responsible party' means a person who is or may be liable for remediation under a remedial program.

(10) 'Prospective developer' means any person who desires to either buy or sell a brownfields property for the purpose of developing or redeveloping that brownfields property and who did not cause or contribute to the contamination at the brownfields property.

(11) 'Regulated substance' means a hazardous waste, as defined in G.S 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program other than Part 2A of Article 21A of Chapter 143 of the General Statutes.

(12) 'Remedial program' means a program implemented by the Department for the remediation of any contaminant, including the Inactive Hazardous Sites Response Act of 1987 under Part 3 of this Article, the Superfund Program under Part 4 of this Article, and the Oil Pollution and Hazardous Substances Control Act of 1978 under Part 2 of Article 21A of Chapter 143 of the General Statutes.

(13) 'Remediation' means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health or the environment.

(14) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

"**§ 130A-310.32. Brownfields agreement.**

(a) The Department may, in its discretion, enter into a brownfields agreement with a prospective developer who satisfies the requirements of this section. A prospective developer shall provide the Department with any information necessary to demonstrate that:

(1) The prospective developer, and any parent, subsidiary, or other affiliate of the prospective developer has substantially complied with:

a. The terms of any brownfields agreement or similar agreement to which the prospective developer or any parent, subsidiary, or other affiliate of the prospective developer has been a party.

b. The requirements applicable to any remediation in which the applicant has previously engaged.

c. Federal and state laws, regulations, and rules for the protection of the environment.

(2) As a result of the implementation of the brownfields agreement, the brownfields property will be suitable for the uses specified in the agreement while fully protecting public health and the environment instead of being remediated to current standards.

(3) There is a public benefit commensurate with the liability protection provided under this Part.

(4) The prospective developer has or can obtain the financial, managerial, and technical means to fully implement the brownfields agreement and assure the safe use of the brownfields property.

(5) The prospective developer has complied with or will comply with all applicable procedural requirements.

(b) In negotiating a brownfields agreement, parties may rely on land-use restrictions that will be included in a Notice of Brownfields Property required under G.S. 130A-310.35. A brownfields agreement may provide for remediation standards that are based on those land-use restrictions.

(c) A brownfields agreement shall contain a description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

(1) Any remediation to be conducted on the property, including:

a. A description of specific areas where remediation is to be conducted.

b. The remediation method or methods to be employed.

c. The resources that the prospective developer will make available.

d. A schedule of remediation activities.

e. Applicable remediation standards.

f. A schedule and the method or methods for evaluating the remediation.

(2) Any land-use restrictions that will apply to the brownfields property.

(3) The desired results of any remediation or land-use restrictions with respect to the brownfields property.

(4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.

(5) The consequences of achieving or not achieving the desired results.

(d) Any failure of the prospective developer or the prospective developer's agents and employees to comply with the brownfields agreement constitutes a violation of this Part by the prospective developer.

"§ 130A-310.33. Liability protection.

(a) A prospective developer who enters into a brownfields agreement with the Department and who is complying with the brownfields agreement shall not be held liable for remediation of areas of contaminants identified in the brownfields agreement except as specified in the brownfields agreement, so long as the activities

conducted on the brownfields property by or under the control or direction of the prospective developer do not increase the risk of harm to public health or the environment and the prospective developer is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as to a prospective developer, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section:

(1) Any person under the direction or control of the prospective developer who directs or contracts for remediation or redevelopment of the brownfields property.

(2) Any future owner of the brownfields property.

(3) A person who develops or occupies the brownfields property.

(4) A successor or assign of any person to whom the liability protection provided under this Part applies.

(5) Any lender or fiduciary that provides financing for remediation or redevelopment of the brownfields property.

(b) A person who conducts an environmental assessment or transaction screen on a brownfields property and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) If a land-use restriction set out in the Notice of Brownfields Property required under G.S. 130A-310.35 is violated, the owner of the brownfields property at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the brownfields property in violation of a land-use restriction shall be liable for remediation to current standards. A prospective developer who completes the remediation or redevelopment required under a brownfields agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation at the brownfields property unless any of the following apply:

(1) The prospective developer knowingly or recklessly provides false information that forms a basis for the brownfields agreement or that is offered to demonstrate compliance with the brownfields agreement or fails to disclose relevant information about contamination at the brownfields property.

(2) New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the brownfields property that has not been remediated to current standards, unless the brownfields agreement is amended to include any previously unreported contaminants and any additional areas of contamination. If the brownfields

agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the brownfields agreement.

(3) The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the brownfields property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants or in the vicinity of the brownfields property or (ii) the failure of remediation to mitigate risks to the extent required to make the brownfields property fully protective of public health and the environment as planned in the brownfields agreement.

(4) The Department obtains new information about a contaminant associated with the brownfields property or exposures at or around the brownfields property that raises the risk to public health or the environment associated with the brownfields property beyond an acceptable range and in a manner or to a degree not anticipated in the brownfields agreement. Any person whose use, including any change in use, of the brownfields property causes an unacceptable risk to public health or the environment may be required by the Department to undertake additional remediation measures under the provisions of this Part.

(5) A prospective developer fails to file a timely and proper Notice of Brownfields Development under this Part.

"§ 130A-310.34. Public notice and community involvement.

(a) A prospective developer who desires to enter into a brownfields agreement shall notify the public and the community in which the brownfields property is located of planned remediation and redevelopment activities. The prospective developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a summary of the Notice of Intent to the Department. The Notice of Intent shall provide, to the extent known, a legal description of the location of the brownfields property, a map showing the location of the brownfields property, a description of the contaminants involved and their concentrations in the media of the brownfields property, a description of the intended future use of the brownfields property, any proposed investigation and remediation, and a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed brownfields agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of

the Notice of Intent and summary of the Notice of Intent by the Department, the prospective developer shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the brownfields property. The prospective developer shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the brownfields property is located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register. The prospective developer shall also conspicuously post a copy of the summary of the Notice of Intent at the brownfields site.

(b) Publication of the approved summary of the Notice of Intent in the North Carolina Register and publication in a newspaper of general circulation shall begin a public comment period of at least 60 days from the later date of publication. During the public comment period, members of the public, residents of the community in which the brownfields property is located, and local governments having jurisdiction over the brownfields property may submit comment on the proposed brownfields agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed brownfields agreement shall submit a written request for a public meeting to the Department within 30 days after the public comment period begins. The Department shall consider all requests for a public meeting and shall hold a public meeting if the Department determines that there is significant public interest in the proposed brownfields agreement. If the Department decides to hold a public meeting, the Department shall, at least 30 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Department shall also direct the prospective developer to publish, at least 30 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in such county where the brownfields property is located. In any county in which there is more than one newspaper having general circulation, the Department shall direct the prospective developer to publish a copy of the notice in as many newspapers having general circulation in the county as the Department in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Department shall prescribe the form and content of the notice to be published. The Department shall prescribe the procedures to be followed in the public meeting. The Department shall take detailed minutes of the meeting. The minutes shall include any written comments, exhibits, or documents presented at the meeting.

(d) Prior to entering into a brownfields agreement, the Department shall take into account the comment received during the comment period and at the public meeting if the Department holds a public meeting. The Department shall incorporate into the brownfields agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Department shall give

particular consideration to written comment that is supported by valid scientific and technical information and analysis.

"§ 130A-310.35. Notice of Brownfields Property; land-use restrictions in deed.

(a) In order to reduce or eliminate the danger to public health or the environment posed by a brownfields property being addressed under this Part, a prospective developer who desires to enter into a brownfields agreement with the Department shall submit to the Department a proposed Notice of Brownfields Property. A Notice of Brownfields Property shall be entitled 'Notice of Brownfields Property', shall include a survey plat of areas designated by the Department that has been prepared and certified by a professional land surveyor and that meets the requirements of G.S. 47-30, shall include a legal description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance, and shall identify all of the following:

(1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of regulated substances and contaminants known to exist on the brownfields property.

(3) Any restrictions on the current or future use of the brownfields property or, with the owner's permission, other property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the brownfields property and that are designated in the brownfields agreement. These land-use restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Where a brownfields property encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded.

(b) After the Department approves and certifies the Notice of Brownfields Property under subsection (a) of this section, a prospective developer who enters into a brownfields agreement with the Department shall file a certified copy of the Notice of Brownfields Property in the register of deeds' office in the county or counties in which the land is located. The prospective developer shall file the Notice of Brownfields Property within 15 days of the prospective developer's receipt of the Department's approval of the notice or the prospective developer's entry into the brownfields agreement, whichever is later.

(c) The register of deeds shall record the certified copy of the notice and index it in the grantor index under the names of the owners of the land, and, if different, also under the name of the prospective developer conducting the redevelopment of the brownfields property.

(d) When a brownfields property is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that

the brownfields property has been classified and, if appropriate, cleaned up as a brownfields property under this Part.

(e) A Notice of Brownfields Property filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the notice is recorded a statement that the hazards have been eliminated and request that the notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the notice and reference the plat book and page where the notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice of Brownfields Property and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice of Brownfields Property showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(f) Any land-use restriction filed pursuant to this section shall be enforced by any owner of the land. Any land-use restriction may also be enforced by the Department through the remedies provided in Part 2 of Article 1 of this Chapter or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the brownfields property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for brownfields properties remediated under this Part.

"§ 130A-310.36. Appeals.

A decision by the Department as to whether or not to enter into a brownfields agreement including the terms of any brownfields agreement is reviewable under Article 3 of Chapter 150B of the General Statutes.

"§ 130A-310.37. Construction of Part.

(a) This Part is not intended and shall not be construed to:

(1) Affect the ability of local governments to regulate land use under Article 19 of Chapter 160A of the General Statutes and Article 18

of Chapter 153A of the General Statutes. The use of the identified brownfields property and any land-use restrictions in the brownfields agreement shall be consistent with local land-use controls adopted under those statutes.

(2) Amend, modify, repeal, or otherwise alter any provision of any remedial program or other provision of this Chapter, Chapter 143 of the General Statutes, or any other provision of law relating to civil and criminal penalties or enforcement actions and remedies available to the Department, except as may be provided in a brownfields agreement.

(3) Prevent or impede the immediate response of the Department or responsible party to an emergency that involves an imminent or actual release of a regulated substance that threatens public health or the environment.

(4) Relieve a person receiving liability protection under this Part from any liability for contamination later caused by that person on a brownfields property.

(5) Affect the right of any person to seek any relief available against any party to the brownfields agreement who may have liability with respect to the brownfields property, except that this Part does limit the relief available against any party to a brownfields agreement with respect to remediation of the brownfields property to the remediation required under the brownfields agreement.

(6) Affect the right of any person who may have liability with respect to the brownfields property to seek contribution from any other person who may have liability with respect to the brownfields property and who neither received nor has liability protection under this Part.

(7) Prevent the State from enforcing specific numerical remediation standards, monitoring, or compliance requirements specifically required to be enforced by the federal government as a condition to receive program authorization, delegation, primacy, or federal funds.

(8) Create a defense against the imposition of criminal and civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or for the pollution of the land, air, or waters of this State on a brownfields property.

(9) Relieve a person of any liability for failure to exercise due diligence and reasonable care in performing an environmental assessment or transaction screen.

(b) Notwithstanding the provisions of the Tort Claims Act, G.S. 143-291 through G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the State of North Carolina, the State, its agencies, officers, employees, and agents shall

be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering, monitoring, or enforcing a brownfields agreement or a Notice of Brownfields Property under this Part or any other action implementing this Part.

"**§ 130A-310.38. Brownfields Property Reuse Act Implementation Account.**

The Brownfields Property Reuse Act Implementation Account is created as a nonreverting interest-bearing account in the Office of the State Treasurer. The Account shall consist of fees collected under G.S. 130A-310.39, moneys appropriated to it by the General Assembly, moneys received from the federal government, moneys contributed by private organizations, and moneys received from any other source. Funds in the Account shall be used by the Department to defray a portion of the costs of implementing this Part.

"**§ 130A-310.39. Fees.**

(a) The Department shall collect the following fees:

(1) A prospective developer who submits a proposed brownfields agreement for review by the Department shall pay a fee of one thousand dollars ($1,000).

(2) A prospective developer who submits a final report certifying completion of remediation under a brownfields agreement shall pay a fee of five hundred dollars ($500.00).

(b) Fees imposed under this section shall be credited to the Brownfields Property Reuse Act Implementation Account.

"**§ 130A-310.40. Legislative reports.**

The Department shall prepare and submit to the Environmental Review Commission, concurrently with the report on the Inactive Hazardous Sites Response Act of 1987 required under G.S. 130A-310.10, an evaluation of the effectiveness of this Part in facilitating the remediation and reuse of existing industrial and commercial properties. This evaluation shall include any recommendations for additional incentives or changes, if needed, to improve the effectiveness of this Part in addressing such properties. This evaluation shall also include a report on receipts by and expenditures from the Brownfields Property Reuse Act Implementation Account."

Section 3. G.S. 130A-26.1(g) is amended by adding three new subdivisions to read:

"(5) Provides false information or fails to provide information relevant to a decision by the Department as to whether or not to enter into a brownfields agreement under Part 5 of Article 9 of this Chapter.

(6) Provides false information or fails to provide information required by a brownfields agreement under Part 5 of Article 9 of this Chapter.

(7) Provides false information relevant to a decision by the Department pursuant to:

a. G.S. 130A-308(b).

b. G.S. 130A-310.7(c).

c. G.S. 143-215.3(f).
d. G.S. 143-215.84(e)."

Section 4. G.S. 130A-308 reads as rewritten:

"**§ 130A-308. Continuing releases at permitted ~~facilities.~~ facilities; notification of completed corrective action.**

(a) Standards adopted under G.S. 130A-294(c) ~~shall require, and a permit issued after November 8, 1984,~~ and a permit issued under G.S. 130A-294(c) shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under G.S. 130A-294(c), regardless of the time at which waste was placed in such unit. Permits issued under G.S. 130A-294(c) which implement Section 3005 of RCRA (42 U.S.C. § 6925) shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by Section 3004(u) of RCRA (42 U.S.C. § 6924(u)). Notwithstanding the foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by this section.

(b) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a corrective action for a release of a hazardous waste or constituents from a solid waste management unit that is a treatment, storage, or disposal facility permitted under G.S 130A-294(c) has been completed to current standards. A request for a determination that a corrective action at a facility has been completed to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the corrective action at a facility has been completed to current standards, the Department shall issue a written notification that no further corrective action will be required at the facility. The notification shall state that no further corrective action will be required at the facility unless the Department later determines, based on new information or information not previously provided to the Department, that the corrective action at the facility has not been completed to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to take corrective action at a facility to bring the facility into compliance with current standards."

Section 5. G.S. 130A-310.7 reads as rewritten:

"**§ 130A-310.7. Action for reimbursement; liability of responsible ~~parties.~~ parties; notification of completed remedial action.**

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this subsection, any person who:

(1) Discharges or deposits; or
(2) Contracts or arranges for any discharge or deposit; or
(3) Accepts for discharge or deposit; or

(4) Transports or arranges for transport for the purpose of discharge or deposit

any hazardous substance, the result of which discharge or deposit is the existence of an inactive hazardous substance or waste disposal site, shall be considered a responsible party. Neither an innocent landowner who is a bona fide purchaser of the inactive hazardous substance or waste disposal site without knowledge or without a reasonable basis for knowing that hazardous substance or waste disposal had occurred nor a person whose interest or ownership in the inactive hazardous substance or waste disposal site is based on or derived from a security interest in the property shall be considered a responsible party. A responsible party shall be directly liable to the State for any or all of the reasonably necessary expenses of developing and implementing a remedial action program for such site. The Secretary shall bring an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the name of the State in the superior court of the county in which the site is located to recover such sum and the cost of bringing the action. The State must show that a danger to the public health or the environment existed and that the State complied with the provisions of this Part.

(b) There shall be no liability under this section for a person who can establish by a preponderance of the evidence that the danger to the public health or the environment caused by the site was caused solely by:

(1) An act of God; or

(2) An act of war; or

(3) An intentional act or omission of a third party (but this defense shall not be available if the act or omission is that of an employee or agent of the defendant, or if the act or omission occurs in connection with a contractual relationship with the defendant); or

(4) Any combination of the above causes.

(c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a site that is subject to this Part has been remediated to current standards as provided in Part 5 of Article 9 of Chapter 130A of the General Statutes. A request for a determination that a site has been remediated to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the site has been remediated to current standards, the Department shall issue a written notification that no further remediation will be required at the site. The notification shall state that no further remediation will be required at the site unless the Department later determines, based on new information or information not previously provided to the Department, that the site has not been remediated to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the site to current standards."

Section 6. G.S. 143-215.3 is amended by adding a new subsection to read:

"(f) Notification of Completed Remedial Action. -- The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that groundwater has been remediated to meet the standards and classifications established under this Part. A request for a determination that groundwater has been remediated to meet the standards and classifications established under this Part shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that groundwater has been remediated to established standards and classifications, the Department shall issue a written notification that no further remediation of the groundwater will be required. The notification shall state that no further remediation of the groundwater will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the groundwater has not been remediated to established standards and classifications or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the groundwater to established standards and classifications."

Section 7. G.S. 143-215.84 is amended by adding a new subsection to read:

"(e) Notification of Completed Removal of Prohibited Discharges. -- The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a discharge of oil or a hazardous substance in violation of this Article has been remediated to current standards. A request for a determination that a discharge has been remediated to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the discharge has been remediated to current standards, the Department shall issue a written notification that no further remediation of the discharge will be required. The notification shall state that no further remediation of the discharge will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the discharge has not been remediated to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the discharge to current standards."

Section 8. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. The Department of Environment, Health, and Natural Resources shall implement the provisions of this act from funds otherwise available or appropriated to the Department.

Section 9. This act becomes effective 1 October 1997.

North Carolina General Assembly
Legislative Services Office

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Memorandum

July 15, 1997

TO: Senate Committee on Finance

FROM: George Givens, Staff Attorney
Jeff Hudson, Staff Attorney

SUBJECT: House Bill 1121 (Brownfields Property Reuse Act)

Section 1 sets out the findings of the General Assembly relating to the reuse of "brownfields property" (abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual or possible environmental contamination and that is or may be subject to cleanup requirements under State or federal law).

Section 2 establishes the Brownfields Property Reuse Act.

§130A-310.30. Short Title.
Brownfields Property Reuse Act.

§130A-310.31. Definitions.
Definitions include:

"Brownfields agreement" means an agreement between the Department of Environment, Health, and Natural Resources (DEHNR) and a prospective developer that meets the requirements of G.S. 130A-310.32 (Brownfields agreements).

"Prospective developer" means any person who desires to either buy or sell a brownfields property for the purpose of developing or redeveloping that property and who did not cause or contribute to the contamination at the brownfields property.

"Remediation" means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health or the environment.

§130A-310.32. Brownfields agreements.

DEHNR may enter into a brownfields agreement (agreement) with a prospective developer (developer).

The developer must demonstrate: (1) the compliance history of itself and its parents, subsidiaries, and affiliates; (2) that the property is suitable for the proposed uses while protecting public health and the environment; (3) that the benefit to the public is commensurate with the liability protection afforded under this Part; (4) the financial, managerial, and technical means to implement the agreement and assure safe use of the property; (5) current and prospective compliance with procedural requirements.

The agreement must include: (1) a legal description of the property; (2) a description of any remediation to be conducted on the property; (3) any land use restrictions that will apply to the property; (4) the desired results of remediation; (5) the guidelines within which the desired results are to be accomplished; and (6) the consequences of achieving or not achieving those results. Failure to comply with an agreement will subject a developer to the enforcement provisions of this Part.

§130A-310.33. Liability protection.

A developer who enters into an agreement with DEHNR and is complying with the agreement will not be held liable for cleanup of areas of contaminants identified in the agreement, so long as the activities conducted on the property do not increase the risk of harm to public health or the environment and the developer is not required to undertake additional remediation pursuant to G.S. 130A-310.33(c) (*see paragraph below*). This liability protection is extended to parties who are not otherwise liable for remediation who are (1) agents of the developer involved in redevelopment or remediation; (2) future owners of the property; (3) persons who develop or occupy the property; (4) successors or assigns to any other person with liability protection; (5) parties providing financing for remediation or redevelopment of the property. Conducting an environmental assessment or transaction screen will not subject a person to liability unless the person increases the risk to public health or the environment by failing to exercise due diligence or reasonable care.

Pursuant to G.S. 130A-310.33(c), if a land-use restriction under the agreement is violated, the owner at the time of violation, the owners successors and assigns, and the owner's agents will be liable for remediation to current standards. A developer who completes the remediation required by an agreement will not be required to undertake additional remediation of the property unless any of the following apply: (1) the developer knowingly or recklessly gives false information in the formation of the agreement or in demonstration of compliance with the agreement; (2) new information indicates the existence of unreported contamination associated with the property; (3) the level of risk becomes unacceptable in the vicinity of the property due to changes in exposure conditions; (4) DEHNR obtains new information about a contamination or exposure that makes the risk unacceptable in a manner not anticipated in the agreement; (5) the owner fails to file a timely and proper Notice of Brownfields Development. In the case of new information indicating the existence of unreported contamination (2), further cleanup will only be required if the original agreement set target concentrations for contaminants and the levels of unreported contaminants exceed these target concentrations or the unreported contaminants raise the risk to public health or the environment.

§130A-310.34. Public notice and community involvement.

A developer desiring to enter into a agreement will notify the public and community in which the property is located of the planned remediation and redevelopment. The developer will also submit notice to DEHNR providing the location of the property, a map of this location, a description of contaminants and their concentrations; a description of intended future use, any

proposed investigation and cleanup measures, and a proposed Notice of Brownfields Property as required by G.S. 130A-310.35 (*see below*). Notice will also be given to local governments with jurisdiction over the property, a newspaper of general circulation serving the area in which the property is located, and the North Carolina Register. The developer will also conspicuously post a summary of the Notice on the property. The public and local governments will have 60 days within which to provide input into the cleanup and redevelopment plans. DEHNR will receive written request for a public meeting during a 30-day period and will hold a public meeting after giving 30 days notice if it determines that there is significant public interest. DEHNR will incorporate public comment into the agreement to the extent practicable and will give particular consideration to written comment that is supported by valid scientific information.

§130A-310.35. Notice of Brownfields Property; land use restrictions in deed.

A person who enters into an agreement with DEHNR will submit to DEHNR a proposed Notice of Brownfields Property that will include: (1) a survey plat prepared by a certified professional land surveyor of areas designated by DEHNR; (2) a legal description of the property; (3) the location and dimensions of areas of potential environmental concern; (4) the type, location, and quantity of contaminants on the property; and (5) any restrictions on current or future use of the property.

After DEHNR approves and certifies the Notice, the developer will file a certified copy of the Notice in the register of deeds' office in the county or counties in which the property is located. The register of deeds will record the Notice and index it in the grantor index under the names of the property owners and, if different, also under the name of the person conducting the redevelopment. When the property is transferred, the instrument of transfer will contain a statement that the property has been classified and, if appropriate, cleaned up as a brownfields property.

A property owner may request that a Notice be canceled by the Secretary of Environment, Health, and Natural Resources (Secretary) after the remediation of a property has eliminated the hazards. If the Secretary concurs with the written request, the Secretary will send to the register of deeds a statement that the hazards have been eliminated and will have the Notice canceled. The register of deeds will record the Secretary's statement and index it in the grantor index.

Restrictions on the current or future use of a property will be enforced by the owner of the property, and may be enforced by DEHNR, any unit of local government having jurisdiction over the property, or any person eligible for liability protection. A restriction will not be declared unenforceable due to: (1) lack of privity of estate or contract, (2) lack of benefit to particular land, or (3) lack of any property interest in particular land. Any person who owns or leases a property subject to a restriction will abide by the restriction.

Notice of brownfields properties will be filed in accordance with these provisions, rather than G.S. 130A-310.8 (Recordation of inactive hazardous substance or waste disposal sites).

§130A-310.36. Appeals.

A decision by DEHNR as to whether or not to enter into an agreement, including any terms of an agreement, is reviewable under the contested case provisions of the North Carolina Administrative Procedure Act.

§130A-310.37. Construction of Part.

This program is not intended to and will not be construed to: (1) affect the ability of local governments to regulate land development; (2) modify any remedial program or enforcement authority of DEHNR, except as provided in an agreement; (3) impede the immediate response of DEHNR or a responsible party to an imminent or actual release threatening public health or the

environment; (4) relieve a person from liability for contamination caused by that person on a brownfields property; (5) and (6) except for further remediation, affect the ability of any person to seek relief or contribution from any person who may have liability with respect to a property and who does not receive cleanup liability; (7) prevent the State from complying with federal laws and standards and receive federal funds; (8) create a defense for the illegal disposal of waste; (9) relieve a person of liability for failure to exercise reasonable care in the performance of an environmental assessment or transaction screen. No action or inaction of the State, its employees, Agencies, or agents related to brownfields agreements will subject the State to tort liability or waive sovereign immunity.

§130A-310.38. Brownfields Property Reuse Act Implementation Account.

The Brownfields Property Reuse Act Implementation Account (Account) is created as a nonreverting, interest-bearing account in the Office of the State Treasurer and consists of fees collected under this Part, moneys appropriated by the General Assembly, moneys received from the federal government, moneys contributed by private organizations, and moneys received from any other source. Funds in the Account will be used to defray a portion of the costs of implementing this Part.

§130A-310.39. Fees.

DEHNR will collect the following fees: (1) $1,000.00 from a developer who submits a proposed agreement to DEHNR and (2) $500.00 from a developer who submits a final report certifying completion of remediation under an agreement. These fees will be credited to the Account.

§130A-310.40. Legislative reports.

DEHNR will report to the Environmental Review Commission on the Brownfields program concurrently with every report on the Inactive Waste Sites program (made on February 15 of each year). The report will evaluate the effectiveness of the Brownfields program in facilitating the remediation and reuse of existing industrial and commercial properties, include any recommendations for additional incentives or changes to improve effectiveness, and include information on receipts by and expenditures from the Account.

Section 3 makes it a Class I felony, which may include a fine of up to $100,000 per day of violation (not to exceed a cumulative total of $500,000 for each 30 day period of continuing violation), to provide false or incomplete information relevant to an agreement or relevant to a determination that remediation has been completed.

Sections 4 through 7 authorize DEHNR to issue a written notification that no further remediation will be required where clean up has been completed to current standards at permitted hazardous waste treatment, storage, and disposal facilities; inactive hazardous sites; groundwater remediation sites; and oil or hazardous substance discharge remediation sites.

Section 8 provides that the General Assembly is not obligated to appropriate funds to implement this act.

Section 9 makes this act effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1121
SHORT TITLE: Brownfields Property Reuse Act
SPONSOR(S): Committee Substitute

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	**See assumptions and methodology**				
EXPENDITURES:	**Revenue from fees used to defray cost of program**				
POSITIONS:	**None**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment Health and Natural Resources

EFFECTIVE DATE: Effective July 1, 1997.

BILL SUMMARY:

Adds new Part 5 (the Brownfields Property Reuse Act) to Article 9 of G.S. Chapter 130A, relating to brownfields property or sites (defined as abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual or possible environmental contamination and that is or may be subject to state or federal remediation requirements). Provides for "brownfields agreements" between a prospective developer and the Department of Environment, Health, and Natural Resources, that (1) provide for cleanup, remediation, or other activities at brownfield property, (2) ensure the property is made and kept safe for its actual use, and (3) provide liability protection for persons consistent with the act. Developer that enters into and complies with such an agreement is not liable for remediation of areas of contaminants identified in the agreement except as specified in the agreement, as long as its activities conducted on the property do not increase the risk of harm to the public health or the environment. The protection also extends to persons under the developer's direction or control, any future owner, a person who develops or occupies the property, a successor or assign of any person with such protection, and any lender or fiduciary that provides financing for remediation or redevelopment of the property. Specifies that a person who conducts an environmental assessment or transaction screen on property is not a person responsible for remediation. Specifies exclusive circumstances under which a prospective developer who complete requirements of an agreement may be required to undertake additional remediation.

Requires developer who desires to enter into a brownfields agreement to notify the public and the community in which the property is located of the planned remediation and redevelopment activities and to submit a notice of intent to redevelop brownfields property to the DEHNR. Specifies required content of the notice. If the DEHNR approves the notice, the developer must provide a copy to all local governments having jurisdiction over the property and publish a summary of it in a newspaper serving the area. DEHNR must publish notice of the approval in the North Carolina Register. After both publications, a public comment period of at least 60 days must follow. Requires DEHNR, before entering into an agreement, to take into account community and local government views and comments. A decision by DEHNR not to enter a brownfields agreement is reviewable under the contested case provisions of the Administrative Procedure Act.

Requires the preparation, approval by the DEHNR, and filing with the register of deeds of a "Notice of Brownfields Property" by a purchaser of a brownfields property that is not otherwise noted in the chain of title as a property on which contaminants are located. Requires register of deeds to record such notice and index it in the grantor index under names of owners and name of person conducting redevelopment of the property. Requires that any instrument of transfer contain in the description section a statement that the property has been classified and, if appropriate, cleaned up, as a brownfields property. Sets out procedure whereby Secretary of Environment, Health, and Natural Resources may cancel a notice of brownfields property.

Provides that a person who knowingly provides false information about a property's eligibility or omits or falsifies required information is guilty of a class I felony, which may include a fine of $50,000 per violation, each day a violation occurs being a separate violation.

Provides that use of brownfields property and any deed restrictions used as part of a redevelopment plan may not be inconsistent with local land development controls adopted under Article 19 of G.S. Chapter 160A or Article 18 of G.S. Chapter 153A. Specifies other laws and rights that the act is not intended to affect. Requires DEHNR, beginning Oct. 1, 1997, to conduct and submit to the Environmental Review Commission an evaluation of the effectiveness of the act concurrently with every report on the Inactive Waste Sites program.

Creates the Brownfields Study Commission, consisting of six members—three appointed by the Speaker and three by the President Pro Tempore — representing specified groups or communities. Directs Secretary of Environment, Health and Natural Resources to designate one employee of the department as an ex officio member. Requires the Commission to meet at least monthly and to report to the 1998 General Assembly and the Environmental Review Commission, no later than the first day the General Assembly convenes. Appropriates from General Fund to the General Assembly $50,000 for 1997-98 for costs of the Commission's work.

Intro. by McComas.

Intro. 4/21/97. House committee substitute makes the following changes to 1st edition. The committee substitute makes numerous clarifying changes and the following substantive changes: (1) deletes provisions making certain acts and omissions related to brownfields agreements a class I felony; (2) deletes provisions establishing the Brownfields Study Commission; (3) deletes appropriation provisions; (4) creates Brownfields Property Reuse Act Implementation Account as nonreverting, interest-bearing account in Office of State Treasurer (account will consist of fees, appropriations, and other revenues related to brownfields agreements and will be used to defray part of cost of implementing the act) and (5) makes act effective when it becomes law (was, July 1, 1997).

Summary Source: Institute of Government

ASSUMPTIONS AND METHODOLOGY:
The amount of revenue collected from the fees imposed in this act in not known. It is expected that some revenue will be generated from the fee $1,000 proposal fee and the $500 final report fee but the actual number of developers choosing to develop in a brownfield in a single year is not known.

The expense associated with the implementation and administration of this act is limited to the revenues generated from the proposal fee and final report fee.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk
APPROVED BY:
DATE: June 2, 1997

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — Wednesday, July 16, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Brown	N.C. State Ports
Leslie Bewacqua	NCCBI
E L Peters	NC Trucking Assn.
[illegible]	CCNC / Sierra Club
Natalie Haskins	Charlotte Chamber
Helen Lipinski	Meck. County
VEIGHOOR POPER	ZDA, PA
Amy Kinkum	Hunton & Williams
Nathaniel Ford	CCNC
Greg Howard	DOT/DMV
Lucia Peel	NC Medical Society

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — Wednesday, July 16, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Zagris	OSBM
Greg Bright	Wake County Environmental Health
Arthur Mouberry	DEHNR - DWQ - Groundwater
Dwight "Buster" Dellinger	North Carolina Groundwater Assoc.
Grover Nicholson	NC Superfund EH/NR
BRUCE NICHOLSON	"
Roger Bone	Bone & Assoc / Progress Dealer
Stuart Dixon	NCNG
Suzanne Wiss	Bone & Assoc
Dick Fountain	Young Moore & Henderson
Cam Cover	BPM BL

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — Wednesday, July 16, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
FULTON Crews	CNC
Sandy Sands	WCSR
Paul Stock	NC Bankers Assn
Carol Dawson	WCSR
Sara Schwarz	Fed. Reserve
David Lazzo	Barnes Kays & Assoc.
Richard Winsmann	DEHNR
Henry Jones	Attorney Raleigh
David Baker	DOR
Jerry Roberts	C.U.C.A.
Danny Massey	D O R

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — Wednesday, July 16, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carol Hartley	Gov's Office
John Rustin	NCFPC
Dan Fulton	ABC Commission
[illegible]	NC Beer & Wine
Perri Morgan	NFIB

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Thursday, July 17, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **408** Plumbing/Heating Contractors/AB.
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **463** Farm Products Weight Exemption.
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **524** UNC Alcohol Ed. Endowment Fund.
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **653** Wentworth Charter Amendments.
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **1158** Reduce Property Tax for Antique Planes.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **696** 3rd Senate District Local Act.
Draft Number: PCS1865
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #2)**1108** Brew on Premises Permit.

Draft Number:	PCSX2366
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **750** Charter of Forest Hills.

Draft Number:	PCS4138
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 8

Committee Clerk Comment: H 408 463 524 653 1158 750 1108 and S 696

SENATE FINANCE COMMITTEE

THURSDAY, JULY 17, 1997

8:00 A.M. - ROOM 544 LOB

The Senate Finance Committee met. There were 25 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order and introduced the Pages, they are Matthew Adams from Gastonia, N. C., sponsored by Senator Hoyle, Douglas Bryant from Washington, N. C., sponsored by Senator Warren, Holly Beam from Cherryville, N. C., sponsored by Senator Hoyle and Stevie Hoyle from Cherryville, N. C., sponsored by Senator Hoyle.

H. B. 1121 - Brownfield Property Reuse Act

Representative McComas came to explain the bill again (NOTE: Bill was taken up at 7-16-97 Meeting). Mr. Charles Case an Environmental Attorney spoke on the Bill. Senator Albertson made a motion to give the bill a "favorable" report, motion passed.

H. B. 847 - Addit. Powers/Certain Water Authority

Representative Culp came to talk again about this Bill. (NOTE: On 6-24-97 this Bill was put into a subcommittee made up of Senator Lee as Chairman and Senators Gulley, Bob Shaw, Phillips and Blust). Senator Lee moved for adoption of committee substitute, motion passed. Mr. Bob High from the State Treasurer's Office spoke on the Bill, also, Mr. John Kime, Executive Director of the Piedmont Water Authority spoke on the Bill. Senator Lee gave a report from the Subcommittee and stated that the concerns that had been expressed when this Bill was heard on June 24, 1997 have been answered and he made a motion to give this Bill a "favorable" report, motion passed.

H. B. 96 - Intangibles Tax Remedy

Senator Kerr explained the bill and the changes that have been made. Senator Conder made a motion for adoption of a committee substitute, motion passed. Mrs. Sabra Faires with the Department of Revenue spoke on the bill. In answer to a question from a member of the Committee, Mrs. Faires stated that she did not have with her the number of protests that have been filed by CPAs or the number of how many have filed under

protests. Senator Conder made a motion to give the proposed committee substitute a "favorable" report, motion passed.

H. B. 722 - Beaufort County Local Act

Mrs. Cindy Avrette, Staff Counsel, explained this Bill. Senator Kerr made a motion to give this Bill a "favorable" report, motion passed.

H. B. 251 - Well Contractors

Representative Culp explained this Bill. Mr. Dwight "Buster" Dellinger of the N. C. Groundwater Association spoke on this Bill. Senator Lee made a motion to give this Bill a "favorable" report, motion passed.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report is Attachment # 3
Committee Report for HB 847 dated 7-22-97 is Attachment # 4

Attachment #1

AGENDA

SENATE FINANCE COMMITTEE

THURSDAY, JULY 17, 1997

8:00 A.M., ROOM 544

- H.B. 96 - Intangibles Tax Remedy - Rep. Dickson
- H.B. 251 - Well Contractors - Rep. Culp
- H.B. 722 - Beaufort County Local Act - Rep. Hardy
- H.B. 847 - Addit Powers/Certain Water Authority - Rep. Culp
- H.B. 1121- Brownfield Property Reuse Act - Rep. McComas

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1121
Committee Substitute Favorable 5/14/97
Committee Substitute #2 Favorable 6/11/97

Short Title: Brownfields Property Reuse Act. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE SAFE REUSE OF PROPERTIES WHERE ACTUAL CONTAMINATION, OR THE POSSIBILITY OF CONTAMINATION, HAS IMPEDED REDEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Findings. -- The General Assembly makes the following findings:

(1) There are abandoned, idle, and underused properties in North Carolina, often referred to as "brownfields", that may have been or were contaminated by past industrial and commercial activities, but that are attractive locations for redevelopment.

(2) The reuse, development, redevelopment, transfer, financing, and other use of brownfields is impaired by the potential liability associated with the risk of contamination.

(3) The safe redevelopment of brownfields would benefit the citizens of North Carolina in many ways, including improving the tax base of local government and creating job opportunities for citizens in the vicinity of brownfields.

(4) Potential purchasers and developers of brownfields and other parties who have no connection with the contamination of the property, including redevelopment lenders, should be encouraged to provide capital and labor to improve brownfields without undue

risk of liability for problems they did not create, so long as the property can be and is made safe for appropriate future use.

(5) Public and local government involvement in commenting on the safe reuse of brownfields will improve the quality and acceptability of their redevelopment.

Section 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 5. Brownfields Property Reuse Act.

"**§ 130A-310.30. Short title.**

This Part may be cited as the Brownfields Property Reuse Act of 1997.

"**§ 130A-310.31. Definitions.**

(a) Unless a different meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and G.S. 130A-310 apply throughout this Part.

(b) Unless a different meaning is required by the context:

(1) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(2) 'Brownfields agreement' means an agreement between the Department and a prospective developer that meets the requirements of G.S. 130A-310.32.

(3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination and that is or may be subject to remediation under any State remedial program other than Part 2A of Article 21 of Chapter 143 of the General Statutes or that is or may be subject to remediation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.).

(4) 'Contaminant' means a regulated substance released into the environment.

(5) 'Current standards' when used in connection with 'cleanup', 'remediated', or 'remediation' means that cleanup or remediation activities at the site comply with generally applicable standards, guidance, or established methods governing contaminants at the site that are adopted or published by the Commission, the Environmental Management Commission, or the Department.

(6) 'Environmental contamination' means contaminants at the property requiring remediation and that are to be remediated under the brownfields agreement including, at a minimum, hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 130A-310; a hazardous substance, as defined in G.S. 143-215.77; or oil, as defined in G.S. 143-215.77.

(7) 'Local government' means a town, city, or county.

(8) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(9) 'Potentially responsible party' means a person who is or may be liable for remediation under a remedial program.

(10) 'Prospective developer' means any person who desires to either buy or sell a brownfields property for the purpose of developing or redeveloping that brownfields property and who did not cause or contribute to the contamination at the brownfields property.

(11) 'Regulated substance' means a hazardous waste, as defined in G.S 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program other than Part 2A of Article 21A of Chapter 143 of the General Statutes.

(12) 'Remedial program' means a program implemented by the Department for the remediation of any contaminant, including the Inactive Hazardous Sites Response Act of 1987 under Part 3 of this Article, the Superfund Program under Part 4 of this Article, and the Oil Pollution and Hazardous Substances Control Act of 1978 under Part 2 of Article 21A of Chapter 143 of the General Statutes.

(13) 'Remediation' means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transport, or further release of a contaminant into the environment in order to protect public health or the environment.

(14) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

"**§ 130A-310.32. Brownfields agreement.**

(a) The Department may, in its discretion, enter into a brownfields agreement with a prospective developer who satisfies the requirements of this section. A prospective developer shall provide the Department with any information necessary to demonstrate that:

(1) The prospective developer, and any parent, subsidiary, or other affiliate of the prospective developer has substantially complied with:

a. The terms of any brownfields agreement or similar agreement to which the prospective developer or any parent, subsidiary, or other affiliate of the prospective developer has been a party.

b. The requirements applicable to any remediation in which the applicant has previously engaged.

c. Federal and state laws, regulations, and rules for the protection of the environment.

(2) As a result of the implementation of the brownfields agreement, the brownfields property will be suitable for the uses specified in the agreement while fully protecting public health and the environment instead of being remediated to current standards.

(3) There is a public benefit commensurate with the liability protection provided under this Part.

(4) The prospective developer has or can obtain the financial, managerial, and technical means to fully implement the brownfields agreement and assure the safe use of the brownfields property.

(5) The prospective developer has complied with or will comply with all applicable procedural requirements.

(b) In negotiating a brownfields agreement, parties may rely on land-use restrictions that will be included in a Notice of Brownfields Property required under G.S. 130A-310.35. A brownfields agreement may provide for remediation standards that are based on those land-use restrictions.

(c) A brownfields agreement shall contain a description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

(1) Any remediation to be conducted on the property, including:

a. A description of specific areas where remediation is to be conducted.

b. The remediation method or methods to be employed.

c. The resources that the prospective developer will make available.

d. A schedule of remediation activities.

e. Applicable remediation standards.

f. A schedule and the method or methods for evaluating the remediation.

(2) Any land-use restrictions that will apply to the brownfields property.

(3) The desired results of any remediation or land-use restrictions with respect to the brownfields property.

(4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.

(5) The consequences of achieving or not achieving the desired results.

(d) Any failure of the prospective developer or the prospective developer's agents and employees to comply with the brownfields agreement constitutes a violation of this Part by the prospective developer.

"§ 130A-310.33. Liability protection.

(a) A prospective developer who enters into a brownfields agreement with the Department and who is complying with the brownfields agreement shall not be held liable for remediation of areas of contaminants identified in the brownfields agreement except as specified in the brownfields agreement, so long as the activities

conducted on the brownfields property by or under the control or direction of the prospective developer do not increase the risk of harm to public health or the environment and the prospective developer is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as to a prospective developer, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section:

(1) Any person under the direction or control of the prospective developer who directs or contracts for remediation or redevelopment of the brownfields property.

(2) Any future owner of the brownfields property.

(3) A person who develops or occupies the brownfields property.

(4) A successor or assign of any person to whom the liability protection provided under this Part applies.

(5) Any lender or fiduciary that provides financing for remediation or redevelopment of the brownfields property.

(b) A person who conducts an environmental assessment or transaction screen on a brownfields property and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) If a land-use restriction set out in the Notice of Brownfields Property required under G.S. 130A-310.35 is violated, the owner of the brownfields property at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the brownfields property in violation of a land-use restriction shall be liable for remediation to current standards. A prospective developer who completes the remediation or redevelopment required under a brownfields agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation at the brownfields property unless any of the following apply:

(1) The prospective developer knowingly or recklessly provides false information that forms a basis for the brownfields agreement or that is offered to demonstrate compliance with the brownfields agreement or fails to disclose relevant information about contamination at the brownfields property.

(2) New information indicates the existence of previously unreported contaminants or an area of previously unreported contamination on or associated with the brownfields property that has not been remediated to current standards, unless the brownfields agreement is amended to include any previously unreported contaminants and any additional areas of contamination. If the brownfields

agreement sets maximum concentrations for contaminants, and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the brownfields agreement.

(3) The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the brownfields property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants or in the vicinity of the brownfields property or (ii) the failure of remediation to mitigate risks to the extent required to make the brownfields property fully protective of public health and the environment as planned in the brownfields agreement.

(4) The Department obtains new information about a contaminant associated with the brownfields property or exposures at or around the brownfields property that raises the risk to public health or the environment associated with the brownfields property beyond an acceptable range and in a manner or to a degree not anticipated in the brownfields agreement. Any person whose use, including any change in use, of the brownfields property causes an unacceptable risk to public health or the environment may be required by the Department to undertake additional remediation measures under the provisions of this Part.

(5) A prospective developer fails to file a timely and proper Notice of Brownfields Development under this Part.

"§ 130A-310.34. Public notice and community involvement.

(a) A prospective developer who desires to enter into a brownfields agreement shall notify the public and the community in which the brownfields property is located of planned remediation and redevelopment activities. The prospective developer shall submit a Notice of Intent to Redevelop a Brownfields Property and a summary of the Notice of Intent to the Department. The Notice of Intent shall provide, to the extent known, a legal description of the location of the brownfields property, a map showing the location of the brownfields property, a description of the contaminants involved and their concentrations in the media of the brownfields property, a description of the intended future use of the brownfields property, any proposed investigation and remediation, and a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed brownfields agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of

the Notice of Intent and summary of the Notice of Intent by the Department, the prospective developer shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the brownfields property. The prospective developer shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the brownfields property is located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register. The prospective developer shall also conspicuously post a copy of the summary of the Notice of Intent at the brownfields site.

(b) Publication of the approved summary of the Notice of Intent in the North Carolina Register and publication in a newspaper of general circulation shall begin a public comment period of at least 60 days from the later date of publication. During the public comment period, members of the public, residents of the community in which the brownfields property is located, and local governments having jurisdiction over the brownfields property may submit comment on the proposed brownfields agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed brownfields agreement shall submit a written request for a public meeting to the Department within 30 days after the public comment period begins. The Department shall consider all requests for a public meeting and shall hold a public meeting if the Department determines that there is significant public interest in the proposed brownfields agreement. If the Department decides to hold a public meeting, the Department shall, at least 30 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Department shall also direct the prospective developer to publish, at least 30 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in such county where the brownfields property is located. In any county in which there is more than one newspaper having general circulation, the Department shall direct the prospective developer to publish a copy of the notice in as many newspapers having general circulation in the county as the Department in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Department shall prescribe the form and content of the notice to be published. The Department shall prescribe the procedures to be followed in the public meeting. The Department shall take detailed minutes of the meeting. The minutes shall include any written comments, exhibits, or documents presented at the meeting.

(d) Prior to entering into a brownfields agreement, the Department shall take into account the comment received during the comment period and at the public meeting if the Department holds a public meeting. The Department shall incorporate into the brownfields agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Department shall give

particular consideration to written comment that is supported by valid scientific and technical information and analysis.

"**§ 130A-310.35. Notice of Brownfields Property; land-use restrictions in deed.**

(a) In order to reduce or eliminate the danger to public health or the environment posed by a brownfields property being addressed under this Part, a prospective developer who desires to enter into a brownfields agreement with the Department shall submit to the Department a proposed Notice of Brownfields Property. A Notice of Brownfields Property shall be entitled 'Notice of Brownfields Property', shall include a survey plat of areas designated by the Department that has been prepared and certified by a professional land surveyor and that meets the requirements of G.S. 47-30, shall include a legal description of the brownfields property that would be sufficient as a description of the property in an instrument of conveyance, and shall identify all of the following:

(1) The location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(2) The type, location, and quantity of regulated substances and contaminants known to exist on the brownfields property.

(3) Any restrictions on the current or future use of the brownfields property or, with the owner's permission, other property that are necessary or useful to maintain the level of protection appropriate for the designated current or future use of the brownfields property and that are designated in the brownfields agreement. These land-use restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Where a brownfields property encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded.

(b) After the Department approves and certifies the Notice of Brownfields Property under subsection (a) of this section, a prospective developer who enters into a brownfields agreement with the Department shall file a certified copy of the Notice of Brownfields Property in the register of deeds' office in the county or counties in which the land is located. The prospective developer shall file the Notice of Brownfields Property within 15 days of the prospective developer's receipt of the Department's approval of the notice or the prospective developer's entry into the brownfields agreement, whichever is later.

(c) The register of deeds shall record the certified copy of the notice and index it in the grantor index under the names of the owners of the land, and, if different, also under the name of the prospective developer conducting the redevelopment of the brownfields property.

(d) When a brownfields property is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that

the brownfields property has been classified and, if appropriate, cleaned up as a brownfields property under this Part.

(e) A Notice of Brownfields Property filed pursuant to this section may, at the request of the owner of the land, be cancelled by the Secretary after the hazards have been eliminated. If requested in writing by the owner of the land and if the Secretary concurs with the request, the Secretary shall send to the register of deeds of each county where the notice is recorded a statement that the hazards have been eliminated and request that the notice be cancelled of record. The Secretary's statement shall contain the names of the owners of the land as shown in the notice and reference the plat book and page where the notice is recorded. The register of deeds shall record the Secretary's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the Notice of Brownfields Property and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice of Brownfields Property showing the date of cancellation and the book and page where the Secretary's statement is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(f) Any land-use restriction filed pursuant to this section shall be enforced by any owner of the land. Any land-use restriction may also be enforced by the Department through the remedies provided in Part 2 of Article 1 of this Chapter or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the brownfields property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(g) This section shall apply in lieu of the provisions of G.S. 130A-310.8 for brownfields properties remediated under this Part.

"**§ 130A-310.36. Appeals.**

A decision by the Department as to whether or not to enter into a brownfields agreement including the terms of any brownfields agreement is reviewable under Article 3 of Chapter 150B of the General Statutes.

"**§ 130A-310.37. Construction of Part.**

(a) This Part is not intended and shall not be construed to:

(1) Affect the ability of local governments to regulate land use under Article 19 of Chapter 160A of the General Statutes and Article 18

of Chapter 153A of the General Statutes. The use of the identified brownfields property and any land-use restrictions in the brownfields agreement shall be consistent with local land-use controls adopted under those statutes.

(2) Amend, modify, repeal, or otherwise alter any provision of any remedial program or other provision of this Chapter, Chapter 143 of the General Statutes, or any other provision of law relating to civil and criminal penalties or enforcement actions and remedies available to the Department, except as may be provided in a brownfields agreement.

(3) Prevent or impede the immediate response of the Department or responsible party to an emergency that involves an imminent or actual release of a regulated substance that threatens public health or the environment.

(4) Relieve a person receiving liability protection under this Part from any liability for contamination later caused by that person on a brownfields property.

(5) Affect the right of any person to seek any relief available against any party to the brownfields agreement who may have liability with respect to the brownfields property, except that this Part does limit the relief available against any party to a brownfields agreement with respect to remediation of the brownfields property to the remediation required under the brownfields agreement.

(6) Affect the right of any person who may have liability with respect to the brownfields property to seek contribution from any other person who may have liability with respect to the brownfields property and who neither received nor has liability protection under this Part.

(7) Prevent the State from enforcing specific numerical remediation standards, monitoring, or compliance requirements specifically required to be enforced by the federal government as a condition to receive program authorization, delegation, primacy, or federal funds.

(8) Create a defense against the imposition of criminal and civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or for the pollution of the land, air, or waters of this State on a brownfields property.

(9) Relieve a person of any liability for failure to exercise due diligence and reasonable care in performing an environmental assessment or transaction screen.

(b) Notwithstanding the provisions of the Tort Claims Act, G.S. 143-291 through G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the State of North Carolina, the State, its agencies, officers, employees, and agents shall

be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering, monitoring, or enforcing a brownfields agreement or a Notice of Brownfields Property under this Part or any other action implementing this Part.

"**§ 130A-310.38. Brownfields Property Reuse Act Implementation Account.**

The Brownfields Property Reuse Act Implementation Account is created as a nonreverting interest-bearing account in the Office of the State Treasurer. The Account shall consist of fees collected under G.S. 130A-310.39, moneys appropriated to it by the General Assembly, moneys received from the federal government, moneys contributed by private organizations, and moneys received from any other source. Funds in the Account shall be used by the Department to defray a portion of the costs of implementing this Part.

"**§ 130A-310.39. Fees.**

(a) The Department shall collect the following fees:

(1) A prospective developer who submits a proposed brownfields agreement for review by the Department shall pay a fee of one thousand dollars ($1,000).

(2) A prospective developer who submits a final report certifying completion of remediation under a brownfields agreement shall pay a fee of five hundred dollars ($500.00).

(b) Fees imposed under this section shall be credited to the Brownfields Property Reuse Act Implementation Account.

"**§ 130A-310.40. Legislative reports.**

The Department shall prepare and submit to the Environmental Review Commission, concurrently with the report on the Inactive Hazardous Sites Response Act of 1987 required under G.S. 130A-310.10, an evaluation of the effectiveness of this Part in facilitating the remediation and reuse of existing industrial and commercial properties. This evaluation shall include any recommendations for additional incentives or changes, if needed, to improve the effectiveness of this Part in addressing such properties. This evaluation shall also include a report on receipts by and expenditures from the Brownfields Property Reuse Act Implementation Account."

Section 3. G.S. 130A-26.1(g) is amended by adding three new subdivisions to read:

"(5) Provides false information or fails to provide information relevant to a decision by the Department as to whether or not to enter into a brownfields agreement under Part 5 of Article 9 of this Chapter.

(6) Provides false information or fails to provide information required by a brownfields agreement under Part 5 of Article 9 of this Chapter.

(7) Provides false information relevant to a decision by the Department pursuant to:

a. G.S. 130A-308(b).

b. G.S. 130A-310.7(c).

c. G.S. 143-215.3(f).
d. G.S. 143-215.84(e)."

Section 4. G.S. 130A-308 reads as rewritten:

"**§ 130A-308. Continuing releases at permitted ~~facilities.~~ facilities; notification of completed corrective action.**

(a) Standards adopted under G.S. 130A-294(c) ~~shall require, and a permit issued after November 8, 1984,~~ and a permit issued under G.S. 130A-294(c) shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under G.S. 130A-294(c), regardless of the time at which waste was placed in such unit. Permits issued under G.S. 130A-294(c) which implement Section 3005 of RCRA (42 U.S.C. § 6925) shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by Section 3004(u) of RCRA (42 U.S.C. § 6924(u)). Notwithstanding the foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by this section.

(b) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a corrective action for a release of a hazardous waste or constituents from a solid waste management unit that is a treatment, storage, or disposal facility permitted under G.S 130A-294(c) has been completed to current standards. A request for a determination that a corrective action at a facility has been completed to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the corrective action at a facility has been completed to current standards, the Department shall issue a written notification that no further corrective action will be required at the facility. The notification shall state that no further corrective action will be required at the facility unless the Department later determines, based on new information or information not previously provided to the Department, that the corrective action at the facility has not been completed to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to take corrective action at a facility to bring the facility into compliance with current standards."

Section 5. G.S. 130A-310.7 reads as rewritten:

"**§ 130A-310.7. Action for reimbursement; liability of responsible ~~parties.~~ parties; notification of completed remedial action.**

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this subsection, any person who:

(1) Discharges or deposits; or
(2) Contracts or arranges for any discharge or deposit; or
(3) Accepts for discharge or deposit; or

(4) Transports or arranges for transport for the purpose of discharge or deposit

any hazardous substance, the result of which discharge or deposit is the existence of an inactive hazardous substance or waste disposal site, shall be considered a responsible party. Neither an innocent landowner who is a bona fide purchaser of the inactive hazardous substance or waste disposal site without knowledge or without a reasonable basis for knowing that hazardous substance or waste disposal had occurred nor a person whose interest or ownership in the inactive hazardous substance or waste disposal site is based on or derived from a security interest in the property shall be considered a responsible party. A responsible party shall be directly liable to the State for any or all of the reasonably necessary expenses of developing and implementing a remedial action program for such site. The Secretary shall bring an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the name of the State in the superior court of the county in which the site is located to recover such sum and the cost of bringing the action. The State must show that a danger to the public health or the environment existed and that the State complied with the provisions of this Part.

(b) There shall be no liability under this section for a person who can establish by a preponderance of the evidence that the danger to the public health or the environment caused by the site was caused solely by:

(1) An act of God; or

(2) An act of war; or

(3) An intentional act or omission of a third party (but this defense shall not be available if the act or omission is that of an employee or agent of the defendant, or if the act or omission occurs in connection with a contractual relationship with the defendant); or

(4) Any combination of the above causes.

(c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a site that is subject to this Part has been remediated to current standards as provided in Part 5 of Article 9 of Chapter 130A of the General Statutes. A request for a determination that a site has been remediated to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the site has been remediated to current standards, the Department shall issue a written notification that no further remediation will be required at the site. The notification shall state that no further remediation will be required at the site unless the Department later determines, based on new information or information not previously provided to the Department, that the site has not been remediated to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the site to current standards."

Section 6. G.S. 143-215.3 is amended by adding a new subsection to read:

"(f) Notification of Completed Remedial Action. -- The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that groundwater has been remediated to meet the standards and classifications established under this Part. A request for a determination that groundwater has been remediated to meet the standards and classifications established under this Part shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that groundwater has been remediated to established standards and classifications, the Department shall issue a written notification that no further remediation of the groundwater will be required. The notification shall state that no further remediation of the groundwater will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the groundwater has not been remediated to established standards and classifications or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the groundwater to established standards and classifications."

Section 7. G.S. 143-215.84 is amended by adding a new subsection to read:

"(e) Notification of Completed Removal of Prohibited Discharges. -- The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a discharge of oil or a hazardous substance in violation of this Article has been remediated to current standards. A request for a determination that a discharge has been remediated to current standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the discharge has been remediated to current standards, the Department shall issue a written notification that no further remediation of the discharge will be required. The notification shall state that no further remediation of the discharge will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the discharge has not been remediated to current standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the discharge to current standards."

Section 8. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. The Department of Environment, Health, and Natural Resources shall implement the provisions of this act from funds otherwise available or appropriated to the Department.

Section 9. This act becomes effective 1 October 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 847
Committee Substitute Favorable 5/12/97

Short Title: Addit. Powers/Certain Water Auth. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO ENTER INTO CERTAIN AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162A-6 is amended by adding a new subdivision to read:

"(17) Each authority created under G.S. 162A-3.1 and its participating political subdivisions may enter into agreements obligating these subdivisions to make payments to the authority for treated water delivered or made available or expected to be delivered or made available by the authority, regardless of whether treated water is actually delivered or made available. Such payments may be designed to cover the authority's operating costs (including debt service and related amounts) by allocating those costs among the participating political subdivisions and by requiring these subdivisions to pay additional amounts to make up for the nonpayment of defaulting subdivisions. The participating political subdivisions may agree to budget for and appropriate such payments. Such payment obligations may be made absolute, unconditional and irrevocable and required to be performed strictly in accordance with the terms of such agreements and without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the authority is completed, operable or operating and notwithstanding the

suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and such obligations may be made subject to no reduction, whether by offset or otherwise, and not conditioned upon the performance or nonperformance of the authority or any participating political subdivision under any agreement. Such payment obligations are in consideration of any output or capacity that may at any time be available from facilities of the authority. The participating political subdivisions may agree to make such payments from limited or specified sources. To the extent such payments relate to debt service of the authority and related amounts, they may not be made from any moneys derived from exercise by the participating political subdivisions of their taxing power, and such payment obligations shall not constitute a pledge of such taxing power. The participating political subdivisions may agree (i) not to pledge or encumber any source of payment and (ii) to operate (including fixing rates and charges) in a manner that enables them to make such payments from such sources. The participating political subdivisions may also secure such payment obligations with a pledge of or lien upon any such sources of payment. Notwithstanding the provisions of G.S. 162A-9 or any other law to the contrary, an authority entering into any such agreement need not fix rates, fees and other charges for its services except as provided herein, and such rates, fees and charges need not be uniform through the authority's service areas. Notwithstanding the provisions of G.S. 160A-322 or any other law to the contrary, agreements described herein may have a term not exceeding 50 years. Notwithstanding any law to the contrary, the execution and effectiveness of any agreement authorized hereby shall not be subject to any authorizations or approvals by any entity except the parties thereto. Each authority and its participating political subdivisions shall have the power to do all acts and things necessary or convenient to carry out the powers granted by this subdivision. This subdivision applies only to authorities created under G.S. 162A-3.1 at least half the participating political subdivisions of which have populations of at least 65,000 according to the most recent decennial federal census."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 847
Committee Substitute Favorable 5/12/97
PROPOSED SENATE COMMITTEE SUBSTITUTE
H847-CSRB-1

Short Title: Addit. Powers/Certain Water Auth. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN WATER AND SEWER AUTHORITIES TO ENTER INTO CERTAIN AGREEMENTS AND TO AUTHORIZE A WATER AND SEWER AUTHORITY HOLDING A CERTIFICATE UNDER G.S. 162A-7 TO EXERCISE THE POWER OF EMINENT DOMAIN FOR SPECIFIED PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162A-6 reads as rewritten:

"**§ 162A-6. Powers of authority generally.**

(a) Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each ~~such~~ authority ~~is, subject to the provisions of G.S. 162A-7, hereby~~ is authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;

(6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;

(7) To issue revenue refunding bonds of the authority as hereinafter provided;

(8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;

(9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;

(10) To acquire in the name of the authority by gift, grant, purchase, devise, exchange, lease, acceptance of offers of dedication by plat, or any other lawful method, to the same extent and in the same manner as provided for cities and towns under the provisions of G.S. 160A-240.1 and G.S. 160A-374, or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this Article shall not vest in the taker any rights by prescription; provided further, that nothing in this section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to

any authority of which such municipality may become a member;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Article;

(12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, copartnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;

(13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided;

(14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and

(14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary

collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer, respectively, to the authority and to the official or employee of the authority who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the Executive Director or other administrative officer designated by the authority to perform the functions described in said sections of the statute.

(14b) To provide for the defense of civil and criminal actions and payment of civil judgments against employees and officers or former employees and officers and members or former members of the governing body as authorized by G.S. 160A-167, as amended.

(14c) To adopt ordinances to regulate and control the discharge of sewage or stormwater into any sewerage system owned or operated by the authority and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types. Prior to the adoption of any such ordinance or any

amendment to any such ordinance, the authority shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance which it is proposed that the authority adopt. The declaration of intent shall be submitted to each governing body for review and comment. The authority shall consider any comment or suggestions offered by any governing body with respect to the proposed ordinance or amendment. Thereafter, the authority shall be authorized to adopt such ordinance or amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body.

(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for

properties that are connected. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State Planning Officer.

(15) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

(16) To purchase real or personal property as provided by G.S. 160A-20, in addition to any other method allowed under this Article.

(b) In addition to the powers given under subsection (a) of this section, an authority created under G.S. 162A-3.1 and its participating political subdivisions may enter into agreements obligating these subdivisions to make payments to the authority for treated water delivered or made available or expected to be delivered or made available by the authority, regardless of whether treated water is actually delivered or made available. Such payments may be designed to cover the authority's operating costs (including debt service and related amounts) by allocating those costs among the participating political subdivisions and by requiring these subdivisions to pay additional amounts to make up for the nonpayment of defaulting subdivisions. The participating political subdivisions may agree to budget for and appropriate such payments. Such payment obligations may be made absolute, unconditional and irrevocable and required to be performed strictly in accordance with the terms of such agreements and without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the authority is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and such obligations may be made subject to no reduction, whether by offset or otherwise, and not conditioned upon the performance or nonperformance of the authority or any participating political subdivision under any agreement. Such payment obligations are in consideration of any output or capacity that may at any time be available from facilities of the authority. The participating political subdivisions may agree to make such payments from limited or specified sources. To the extent such payments relate to debt service of the authority and related amounts, they may not be made from any moneys derived from exercise by the participating political subdivisions of

their taxing power, and such payment obligations shall not constitute a pledge of such taxing power. The participating political subdivisions may agree (i) not to pledge or encumber any source of payment and (ii) to operate (including fixing rates and charges) in a manner that enables them to make such payments from such sources. The participating political subdivisions may also secure such payment obligations with a pledge of or lien upon any such sources of payment. Notwithstanding the provisions of G.S. 162A-9 or any other law to the contrary, an authority entering into any such agreement need not fix rates, fees and other charges for its services except as provided herein, and such rates, fees and charges need not be uniform through the authority's service areas. Notwithstanding the provisions of G.S. 160A-322 or any other law to the contrary, agreements described herein may have a term not exceeding 50 years. Notwithstanding any law to the contrary, the execution and effectiveness of any agreement authorized hereby shall not be subject to any authorizations or approvals by any entity except the parties thereto. Each authority and its participating political subdivisions shall have the power to do all acts and things necessary or convenient to carry out the powers granted by this subdivision. This subsection applies only to authorities created under G.S. 162A-3.1, at least half the participating political subdivisions of which have populations of at least 65,000 according to the most recent decennial federal census.

(c) In addition to the powers given under subsections (a) and (b) of this section, an authority that holds a certificate issued by the Environmental Management Commission under G.S. 162A-7 (repealed) may acquire property by the power of eminent domain or by gift, purchase, grant, exchange, lease, or any other lawful method for one or more of the following purposes:

1. To relocate a road or to construct a road necessitated by construction of water supply project.
2. To establish, extend, enlarge, or improve storm sewer and drainage systems and works, or sewer and septic tank lines and systems.
3. To establish drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.
4. To acquire property for wetlands mitigation."

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

EXPLANATION OF HOUSE BILL 847:
PROPOSED COMMITTEE SUBSTITUTE
Additional Powers/Certain Water Authorities

TO: Senate Finance Committee
FROM: Committee Counsel
DATE: June 25, 1997
SPONSOR: Rep. Culp

Proposed Committee Substitute for House Bill 847 adds new powers to those given to a water and sewer authority under G.S. 162A-7. A water and sewer authority may be created by a county or by the governing bodies of two or more political subdivisions. The purpose of a water and sewer authority is to provide a water supply system and to regulate and control treatment of sewage and stormwater drainage.

Under new subsection (b), water and sewer authorities created under G.S. 162A-3.1 and with respect to which at least half the participating political subdivisions have populations of at least 65,000 are authorized to enter into long-term (up to 50 years) continuing contracts with their participating subdivisions. (It is believed that the only authority that meets the criteria of G.S. 162A-3.1 is Piedmont Triad Water Authority.) These contracts would obligate the subdivisions to pay for treated water that is delivered or made available by their authority, regardless of whether the water actually is delivered or made available. The payments may cover the authority's operating costs, including debt service, by allocating the costs among the political subdivisions and by requiring payment by the other subdivisions upon the default of another subdivision. Payments that relate to the authority's debt service may not be made from tax revenue of the participating political subdivisions and may not constitute a pledge of their taxing power. In addition, the participating political subdivisions may agree not to pledge or encumber any source of payment and to operate, such as by fixing rates and charges, in order to enable them to make the payments from those sources. Unlike other rates set by the authority, rates and charges in connection to these agreements would not be required to be uniform throughout the authority's service area. A contract would not be subject to the authorization or approval by any entity other than the parties. (However, revenue bonds to be issued that are secured by one of these contracts would be subject to the scrutiny of the Local Government Commission.)

Subsection (b) of the bill was requested by bond counsel, and appears to address a project financed with revenue bonds, where the potential buyers do not feel as if the revenue is sufficiently secure since it probably is unclear how

much treated water will, in fact, be sold. According to David Lawrence, Institute of Government, a case in Washington that arose upon the financial collapse of a project, held that absent specific statutory authority to enter into these types of agreements, the agreements were void and the participating governmental units could not be made to pay the remaining debts. As a result of this case, bond counsel are asking for this type of law. There is precedent in North Carolina for this type of statutory authority. G.S. 159B-12 authorizes any municipality that is a member of a joint power agency to enter into similar contracts. The major exception is that certain contracts "in respect of a capital project to be used by or for the benefit" of the municipality must receive the prior approval of the Local Government Commission.

Under new subsection (c), an authority, that has a certificate issued by the Environmental Management Commission under G.S. 162A-7 (repealed) may exercise the powers of eminent domain for the following purposes:

1. To relocate a road or to construct a road necessitated by construction of a water supply project.
2. To establish, extend, enlarge, or improve storm sewer and drainage systems and works.
3. To establish drainage programs and programs to prevent obstructions to the natural flow of streams, creeks, and natural water channels.
4. To improve drainage facilities.
5. To acquire property for wetlands mitigation.

According to John Kime, with the Piedmont Triad Water Authority, subsection (c) is necessary to insure that the Authority has sufficient powers of eminent domain not only to acquire the property for Randleman Lake, but also to construct roads and to acquire property for wetlands mitigation necessary for completion of the project. The Authority is the only one holding a certificate under G.S. 162A-7 that has not completed its project.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 96
Second Edition Engrossed 2/25/97
Committee Substitute Favorable 7/2/97

Short Title: Intangibles Tax Remedy. (Public)

Sponsors:

Referred to:

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE SECRETARY OF REVENUE TO MAKE REFUNDS OF THE INTANGIBLES TAX TO TAXPAYERS WHO PRESERVED THEIR RIGHT TO A REFUND BY PROTESTING PAYMENT WITHIN THE TIME LIMITS SET BY G.S. 105-267.

The General Assembly of North Carolina enacts:

Section 1. Because the General Assembly has enacted S.L. 1997-17, prohibiting the Secretary of Revenue from collecting intangibles tax liability arising from a taxpayer's use of the taxable percentage deductions in former G.S. 105-203 (repealed) for any of the tax years from 1990 through 1994, G.S. 105-267 as it applies to those tax years entitles a taxpayer to a refund for one or more of those tax years to the extent the taxpayer meets all of the following requirements with respect to the applicable tax year:

(1) The taxpayer paid intangibles tax on shares of stock for the tax year.

(2) The taxpayer protested payment of the tax within 30 days of payment and met the other requirements of G.S. 105-267, as it then existed, to establish and preserve the taxpayer's refund claim for the tax year.

(3) The taxpayer's established and preserved refund claim was pending on February 21, 1996, the date the United States Supreme

Court held the taxable percentage deduction in former G.S. 105-203 unconstitutional.

Section 2. The Secretary of Revenue shall make these refunds in accordance with G.S. 105-267.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 96
Second Edition Engrossed 2/25/97
Committee Substitute Favorable 7/2/97
Proposed Senate Committee Substitute H96-PCS8260

Short Title: Intangibles Tax Remedy. (Public)

Sponsors:

Referred to:

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE SECRETARY OF REVENUE TO (1) MAKE REFUNDS OF THE INTANGIBLES TAX TO TAXPAYERS WHO PRESERVED THEIR RIGHT TO A REFUND BY PROTESTING PAYMENT WITHIN THE TIME LIMITS SET BY G.S. 105-267 AND (2) NOTIFY AFFECTED INTANGIBLES TAXPAYERS BY MAIL AS SOON AS POSSIBLE OF THE COURT NOTICE IN THE CLASS ACTION LAWSUIT REGARDING REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. Because the General Assembly has enacted S.L. 1997-17, prohibiting the Secretary of Revenue from collecting intangibles tax liability arising from a taxpayer's use of the taxable percentage deductions in former G.S. 105-203 (repealed) for any of the tax years from 1990 through 1994, G.S. 105-267 as it applies to those tax years entitles a taxpayer to a refund for one or more of those tax years to the extent the taxpayer meets all of the following requirements with respect to the applicable tax year:

(1) The taxpayer paid intangibles tax on shares of stock for the tax year.

(2) The taxpayer protested payment of the tax within 30 days of payment and met the other requirements of G.S. 105-267, as it then

existed, to establish and preserve the taxpayer's refund claim for the tax year.

(3) The taxpayer's established and preserved refund claim was pending on February 21, 1996, the date the United States Supreme Court held the taxable percentage deduction in former G.S. 105-203 unconstitutional.

Section 2. The Secretary of Revenue shall make these refunds in accordance with G.S. 105-267.

Section 3. (a) The Secretary of Revenue shall, as soon as possible, mail a copy of the Wake County Superior Court's notice in the class action lawsuit Smith v. State to all intangibles taxpayers that she has identified as possibly being affected and for whom she has identified a last known mailing address. The court's notice requires immediate action by affected taxpayers. The Secretary of Revenue shall, therefore, make an extraordinary effort to assure that the notices are sent as quickly as possible.

(b) It is the intent of the General Assembly that as many affected taxpayers as possible receive actual, complete information before the deadline set by the court for taxpayers to make a decision regarding the class action lawsuit. The Secretary of Revenue shall supplement the mailing required by this section with circulation of the court's notice to tax professionals and media outlets throughout the State and to any other person she considers appropriate to implement the intent of this section.

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

EXPLANATION OF HOUSE BILL 96:
Intangibles Tax Remedy (PCS)

TO: Senate Finance Committee
FROM: Committee Staff
DATE: July 14, 1997

The proposed Senate committee substitute for House Bill 96 has two provisions regarding the intangibles tax:

1. It provides a refund of the intangibles tax on stock, with interest, to taxpayers who made a timely protest ("protesters") for the 1990 through 1994 tax years. (Sections 1 and 2)
2. It directs the Secretary of Revenue to, as soon as possible, mail a copy of the Wake County Superior Court's notice in the class action lawsuit Smith v. State to all protesters that she has identified. (Section 3)

Since the enactment of Senate Bill 388, S.L. 1997-17, the State is obligated to pay protesters their refunds. The bill does not provide relief to nonprotesters. The Attorney General's office issued an opinion in April that it would be unconstitutional for the General Assembly to refund intangible taxes not filed under protest.

There is a lawsuit pending in Wake County Superior Court called Smith v. State, seeking refunds of intangibles taxes paid for the 1991 through 1994 tax years. The court has certified the case as a class action representing all taxpayers who paid under timely protest. On June 11, 1997, the court entered judgment in favor of the protesters, awarding them full refunds with interest.

On August 8, 1997, the court will hold a hearing to decide various issues including an award of attorneys fees and costs to the plaintiffs' attorneys in the class action lawsuit. Any such award will be deducted from the interest paid on refunds to the protesters who are members of the class. The attorneys have requested a fee equal to 16% of the total amount to be paid to protesters. The Department of Revenue and the State of North Carolina are opposing any award of attorneys fees on the grounds that the Department of Revenue will pay all protesters for the 1992 through 1994 tax years anyway, whether or not there is a court order.

A taxpayer may decide to "opt out" of the class. By doing so, the taxpayer will avoid having attorneys fees deducted from the taxpayer's intangibles tax refund. A taxpayer who opts out will still receive a refund for any of the tax

years from 1992 through 1994 for which the taxpayer was a timely protester. Most taxpayers who protested did so only for 1993, 1994, or both. If a taxpayer paid under protest for 1991 but did not "preserve" the protest by filing suit, the taxpayer will not receive a refund for that year unless the taxpayer remains in the class. Most taxpayers did not pay under protest for the 1991 tax year, however.

The court has issued a notice of the lawsuit and the possibility opting out. The notice, which sets a July 28, 1997, deadline for opting out, has been published in newspapers across the State, but many affected taxpayers have not seen the notice because it was in the classifieds section. Section 3 of the bill directs the Secretary of Revenue to mail a notice to as many affected taxpayers as possible and provides funds for the cost of the mailing. Section 3 states the General Assembly's intent that as many affected taxpayers as possible receive actual, complete information before the deadline set by the court for taxpayers to make a decision regarding the class action lawsuit.

On February 10, 1997, the North Carolina Supreme Court held that the taxable percentage deduction in the North Carolina intangible tax on stock violated the commerce clause by discriminating against out-of-state companies. The deduction reduced a taxpayer's liability for the tax in proportion to the amount of business the corporation did in North Carolina. The court did not order refunds. Instead, it allowed the possibility of curing the past discrimination by the assessment of intangibles tax on those who did not pay in reliance on the unconstitutional taxable percentage deduction. The Secretary of Revenue began preparing to take this action in early March.

However, on April 9, 1997, the General Assembly ratified Senate Bill 388, and the Governor signed it into law, S.L. 1997-17, on April 10, 1997. That legislation directed the Secretary of Revenue to take no action to collect or assess back intangibles tax for tax years 1990 through 1994. The act forecloses the possibility of assessments on those who relied on the taxable percentage deduction. Therefore, to cure the past discrimination, the General Assembly must now provide intangibles tax refunds to those intangibles taxpayers who paid tax on shares of stock and who protested the payment of the tax within 30 days of payment.

House Bill 96 does not provide relief to nonprotesters. Because the State has no legal obligation to these taxpayers, any payments would be an exclusive emolument prohibited by Article I, Section 32 of the North Carolina Constitution. The exclusive emoluments provision of the State Constitution prohibits the legislature from extending special privileges to a select group of individuals except in consideration of public services.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 722
Committee Substitute Favorable 4/29/97

Short Title: Beaufort County Local Act. (Local)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF WASHINGTON TO NEGOTIATE ANNEXATION AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. the City of Washington may, by agreement, provide that certain property described in the agreement may not be annexed by the City under Parts 2 or 3 of Article 4A of Chapter 160A of the General Statutes prior to December 30, 2006.

Section 2. The City of Washington may accept, as consideration for such agreement, such agreements by the parties as the City of Washington deems just and appropriate, including, but not limited to, agreements by property owners to agree to enter into agreements which obligate the property owner to create and fill a specified number of job positions for low and moderate income employees at the property owner's plant in Beaufort County, North Carolina.

Section 3. Agreements under Section 1 of this act apply only to the following described properties:

TRACT I:

All that certain tract or parcel of land lying and being situated in Chocowinity Township, Beaufort County, North Carolina, and being more particularly described as follows:

Beginning at a point in the southern right-of-way line of NCSR 1166 (Whichards Beach Road); said point being located the following courses and distances from a concrete monument located at the southeasterly corner of the subdivision known as Harbor Estates, as shown on a plat thereof recorded in plat Cabinet A, Slide 113A in the office of the Register of Deeds of Beaufort County, North Carolina (said concrete monument also being the southwesterly corner of Tract II described below): South 35° 52' 54" East 62.93 feet; South 36° 20' 33" West 30.61 feet; and South 64° 01' 09" East 16.66 feet to a point. THENCE FROM SAID POINT OF BEGINNING BEING SO LOCATED, along and with the southern right-of-way line or Whichards Beach Road South 64° 01' 03" East 132.39 feet to a point; thence south 64° 00' 52" East 49.07 feet to a point, thence South 64° 01' 18" East 50.66 feet to a point; thence South 64° 01' 12" East 220.27 feet to a point; thence South 64° 01' 09" East 45.61 feet to a point; thence continuing along and with the southern right-of-way line of NCSR 1166 with a curve to the right in a southeastwardly direction which has a chord bearing and distance of South 57° 55' 13" East 341.99 feet to a point; thence South 51° 52' 17" East 22.40 feet to a point; thence continuing South 51° 52' 17" East 300.00 feet to a point in the southern right-of-way line of NCSR 1166 (all previous calls being along and with the southern right-of-way line of NCSR 1166); thence leaving NCSR 1166 South 38° 00' 08" West 140.26 feet to a point; thence South 51° 52' 37" East 31.00 feet to a point; thence South 51° 52' East 99.57 feet to an existing concrete monument; thence continuing North 38° 18' 41" East 127.20 feet to an existing concrete monument; thence North 38° 18' 41" East 102.41 feet to an existing concrete monument; thence continuing North 38° 18' 41" East 363.45 feet to an existing concrete monument; thence continuing North 38° 18' 41" East 723.64 feet more or less to the mean highwater line on the southern shoreline of the Pamlico River; thence along and with the mean highwater line on the southern shoreline of the Pamlico River South 03° 46' 08" East 35.33 feet to a point; thence South 31° 43' 09" West 1,725.69 feet more or less to the northern right-of-way line of NCSR 1166; thence continuing along and with the northern right-of-way line of NCSR 1166 North 51° 54' 27" West 221.81 feet to the point or place of beginning, said property containing approximately 4.84 acres. The above description is from a survey by W. C. Owen of Quible and Associates, P.C.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 251
Committee Substitute Favorable 6/9/97

Short Title: Well Contractors Certification. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE WELL CONTRACTORS CERTIFICATION COMMISSION, TO REQUIRE THAT WELL CONTRACTORS BE CERTIFIED, AND TO MAKE VARIOUS AMENDMENTS TO THE WELL CONSTRUCTION ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

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

"Part 9A. Well Contractors Certification Commission.

"**§ 143B-301.10. Definitions.**

The definitions in G.S. 87-85 and G.S. 87-98.2 apply in this Part.

"**§ 143B-301.11. Creation, powers, and duties of the Commission.**

(a) Creation and Duties. -- The Well Contractors Certification Commission is created within the Department. The Commission shall:

(1) Adopt rules with respect to the certification of well contractors as provided by Article 7A of Chapter 87 of the General Statutes.

(2) Exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. The Commission shall make the final agency decision on any matter involving the certification of well contractors pursuant to Article 7A of Chapter 87 of the General Statutes and on civil penalties assessed for violations of that Article or rules adopted pursuant to that Article.

(3) Adopt rules as may be required to secure a federal grant-in-aid for a program concerned with the certification of well contractors. This subdivision is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(b) Delegation. -- The Commission may, by rule, delegate to the Secretary any of its powers, other than the power to adopt rules.

"**§ 143B-301.12. Membership of Commission.**

(a) Appointments. -- The Commission shall consist of seven members appointed as follows:

(1) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located east of or is traversed by Interstate 95.

(2) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of domestic water supply wells, and (iv) a resident of a county that is located wholly west of Interstate 95.

(3) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of industrial, municipal, or other large capacity water supply wells.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) engaged in well contractor activities, (ii) certified as a well contractor under Article 7A of Chapter 87 of the General Statutes, and (iii) engaged primarily in the construction, installation, repair, alteration, or abandonment of nonwater supply wells, such as monitoring or recovery wells.

(5) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is (i) employed by a local county health department and (ii) actively engaged in well inspection and permitting.

(7) One member appointed by the Governor who is (i) appointed from the public at large, (ii) not engaged in well contractor activities, and (iii) not an employee of a firm or corporation engaged in well contractor activities or a State or county governmental agency.

(b) Additional Qualifications. -- Appointment of members to fill positions (1), (2), (3), and (4) shall be made from among all those persons who are recommended for appointment to the Commission by any person who is engaged in well contractor activities and who is certified as a well contractor under Article 7A of Chapter 87 of the General Statutes. No person shall be appointed to the Commission who is a resident of, or has a principal place of business in, the same county as another member of the Commission.

(c) Terms. -- Appointments to the Commission shall be for terms of three years. The terms of members appointed to fill positions (1), (2), and (7) shall expire on 30 June of years evenly divisible by three. The terms of members appointed to fill positions (3) and (4) shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of members appointed to fill positions (5) and (6) shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. Members shall serve until their successors are appointed and qualified. No member shall serve more than two consecutive terms.

(d) Officers. -- The Commission shall elect a Chair and a Vice-Chair from among its members. These officers shall serve from the time of their election until 30 June of the following year, or until a successor is elected.

(e) Vacancies. -- An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(f) Removal. -- The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance, as provided in G.S. 143-13.

(g) Compensation. -- The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) Quorum. -- A majority of the membership of the Commission constitutes a quorum for the transaction of business.

(i) Services. -- All clerical and other services required by the Commission shall be supplied by the Secretary."

Section 2. Chapter 87 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.
"Well Contractors Certification.

"§ 87-98.1. Title.

This Article may be cited as the North Carolina Well Contractors Certification Act.

"§ 87-98.2. Definitions.

The definitions in G.S. 87-85 and the following definitions apply in this Article:

(1) Commission. -- The Well Contractors Certification Commission.
(2) Department. -- The Department of Environment, Health, and Natural Resources.
(3) Person. -- A natural person.
(4) Secretary. -- The Secretary of Environment, Health, and Natural Resources.
(5) Well contractor. -- A person in trade or business who undertakes to perform a well contractor activity or who undertakes to personally supervise or personally manage the performance of a well contractor activity on the person's own behalf or for any person, firm, or corporation.
(6) Well contractor activity. -- The construction, installation, repair, alteration, or abandonment of any well.

"§ 87-98.3. Purpose.

It is the purpose of this Article to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors.

"§ 87-98.4. Well contractor certification required; applicability.

(a) Certification Required. -- No well contractor shall perform any well contractor activity without being certified under this Article. The Commission may specify the types of general construction activities or geophysical activities that are not directly related to locating, testing, or withdrawing groundwater; evaluating, testing, developing, draining, or recharging any groundwater reservoir or aquifer; or controlling, diverting, or otherwise causing the movement of water from or into any aquifer and are therefore not well construction activities.

(b) Applicability. -- This Article does not apply to a person who meets any of the following descriptions:

(1) Is employed by, or performs labor or services for, a certified well contractor in connection with well contractor activity performed under the personal supervision of the certified well contractor.
(2) Constructs, repairs, or abandons a well that is located on land owned or leased by that person.

"§ 87-98.5. Types of certification; sole certification.

The Commission, with the advice and assistance of the Secretary, shall establish the appropriate types of certification for well contractors. Each certification type established by the Commission shall be the sole certification required to engage in well contractor activity in the State.

"§ 87-98.6. Well contractor qualifications and examination.

The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant.

"§ 87-98.7. Issuance and renewal of certificates; temporary certification.

(a) Issuance. -- An applicant, upon satisfactorily meeting the appropriate requirements, shall be certified to perform in the capacity of a well contractor and shall be issued a suitable certificate by the Commission designating the level of the person's competency. A certificate shall be valid for one year or until any of the following occurs:

(1) The certificate holder voluntarily surrenders the certificate to the Commission.

(2) The certificate is revoked or suspended by the Commission for cause.

(b) Renewal. -- A certificate shall be renewed annually by payment of the annual fee. A person who fails to renew a certificate within three months of the expiration of the certificate must reapply for certification under this Article.

(c) Temporary Certification. -- A person may receive temporary certification to construct a well upon submission of an application to the Commission and subsequent approval in accordance with the criteria established by the Commission and upon payment of a temporary certification fee. A temporary certification shall be granted to the same person only once per calendar year and may not be valid for a period in excess of 45 consecutive days. To perform additional well contractor activity during that same calendar year, the person shall apply for certification under this Article.

"§ 87-98.8. Disciplinary actions.

The Commission may issue a written reprimand to a well contractor or, in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, may suspend or revoke the certificate of a well contractor if the Commission finds that the well contractor has:

(1) Engaged in fraud or deception in connection with obtaining certification or in connection with any well contractor activity.

(2) Failed to use reasonable care, judgment, or the application of the person's knowledge or ability in the performance of any well contractor activity.

(3) Been grossly negligent or has demonstrated willful disregard of any applicable laws or rules governing well construction.

(4) Failed to satisfactorily complete continuing education requirements established by the Commission.

"**§ 87-98.9. Fees; Well Construction Fund.**

(a) Fees. -- The Commission may set a fee for certification by examination, an annual fee for certification renewal, and a fee for temporary certification. The fee for certification by examination may not exceed one hundred dollars ($100.00), the annual fee may not exceed two hundred dollars ($200.00) per year, and the temporary certification fee shall not exceed one hundred dollars ($100.00). A well contractor certificate is void if the well contractor fails to pay the annual fee within 30 days of the date the fee is due.

(b) Fund. -- The Well Construction Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used for the costs of administering this Article.

"**§ 87-98.10. Promotion of training.**

The Commission and the Secretary may provide training for well contractors and cooperate with educational institutions and private and public associations, persons, or corporations in providing training for well contractors.

"**§ 87-98.11. Responsibilities of well contractors.**

All persons receiving certification under this Article to perform well contractor activities in this State shall be responsible for complying with all statutes, rules, and generally accepted construction practices, including all local rules or ordinances governing well contractor activities.

"**§ 87-98.12. Continuing education requirements.**

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete the number of hours of approved continuing education required by the Commission. The Commission shall establish the minimum number of hours of continuing education that shall be required to maintain certification, shall specify the scope of required continuing education courses, and shall approve continuing education courses.

"**§ 87-98.13. Injunctive relief.**

Upon violation of this Article, a rule adopted under this Article, or an order issued under this Article, the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed under this Article for the violation, request the Attorney General to institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation or require corrective action and for any other relief the court finds proper. Initiating an action shall not relieve any party to the proceedings from any penalty prescribed by this Article."

Section 3. G.S. 87-94 reads as rewritten:

"**§ 87-94. Civil penalties.**

(a) Any person who violates any provision of this ~~Article,~~ Article, Article 7A of this Chapter, ~~or~~ any order issued pursuant thereto, or any rule adopted thereunder, shall be subject to a civil penalty of not more than one hundred dollars ($100.00) for each violation, as determined by the Secretary of Environment, Health, and Natural

Resources. Each day of a continuing violation shall be considered a separate offense. No person shall be subject to a penalty who did not directly commit the violation or cause it to be committed.

~~(b) No penalty shall be assessed until the person alleged to be in violation has been:~~

~~(1) Notified of the violation in accordance with the notice provisions set out in G.S. 87-91(a);~~

~~(2) Informed by said notice of remedial action, which if taken within 30 days from receipt of the notice, will effect compliance with this Article and the regulations under it, and~~

~~(3) Warned by said notice that a civil penalty can be assessed for failure to comply within the specified time.~~

(c) In determining the amount of the penalty the Secretary shall consider factors set out in G.S. 143B-282.1(b). The procedures set out in ~~G.S. 143-215.6~~ G.S. 143-215.6A and G.S. 143B-282.1 shall apply to civil penalties assessed under this section.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4.

~~(e) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment or requests remission of the assessment in whole or in part. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.~~"

Section 4. G.S. 87-85(14) reads as rewritten:

"(14) 'Well' means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing or withdrawing groundwater or for evaluating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer. ~~Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens).~~"

Section 5. G.S. 143-355(e) reads as rewritten:

"(e) Registration with Department Required; Registration Periods. -- Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this ~~State,~~ State

shall register annually with the Department on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year. Registration fees collected under this section shall be credited to the Well Construction Fund created by G.S. 87-98.9."

Section 6. G.S. 143-355(e) is repealed.

Section 7. G.S. 87-91 reads as rewritten:

"**§ 87-91. ~~Notice.~~ Notice of violation; remedial action order.**

(a) Whenever the Environmental Management Commission has reasonable grounds to believe that there has been a violation of this ~~Article,~~ Article or any rule ~~or regulation~~ adopted pursuant ~~thereto,~~ to this Article, the Environmental Management Commission or Department shall give written notice to the person or persons alleged to be in violation. ~~Such~~ The notice shall identify the provision of this ~~Article, or regulation issued hereunder,~~ Article or rule adopted pursuant to this Article alleged to be violated and the facts alleged to constitute ~~such~~ the violation. The Environmental Management Commission may also issue an order requiring specific remedial action. An order requiring remedial action shall specify the action to be taken, the date by which the action must be completed, the possible consequences of failing to comply with the order, and the procedure by which the alleged violator may seek review of the order.

(b) ~~Such Department shall serve the notice and any order requiring remedial action on the person alleged to be in violation, shall be served on the person by sending the same to such person by registered or certified mail to his last known post-office address or by personal service by an agent or employee of the Department of Environment, Health, and Natural Resources, and may be accompanied by an order of the Environmental Management Commission requiring described remedial action, which if taken within the time specified in such order, will effect compliance with the requirements of this Article and the rules issued hereunder. Such order shall become final unless a request for a hearing as hereinafter provided is made within 30 days from the date of service of such order. In addition to, or in lieu of such order, the Environmental Management Commission may appoint a time and place for such person to be heard. Notice by the Environmental Management Commission or Department may be given to any person upon whom a summons may be served in accordance with the provisions of law governing civil actions in the superior courts of this State. The Environmental Management Commission may prescribe the form and content of any particular notice.~~ The notice may be served by any means authorized under G.S. 1A-1, Rule 4."

Section 8. (a) To provide for staggered terms, initial appointments to the Well Contractors Certification Commission created in Section 1 of this act shall be as follows:

(1) Initial appointments to positions (1), (2), and (7) shall expire on 30 June 2001.

(2) Initial appointments to positions (3) and (4) shall expire on 30 June 1999.

(3) Initial appointments to positions (5) and (6) shall expire on 30 June 2000.

(b) In the event that the General Assembly fails to appoint one or more initial members to the Well Contractors Certification Commission while the General Assembly is in session during 1997, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

Section 9. (a) Unless an applicant is found to have engaged in an act that would constitute grounds for disciplinary action under G.S. 87-98.8, as enacted by Section 2 of this act, the Well Contractors Certification Commission shall issue a well contractor certificate without examination to any person who, since 1 July 1992, has been actively and continuously engaged in well contractor activity and who has been:

(1) Continuously registered with the Department as required by G.S. 143-355(e), or

(2) Employed by a firm or corporation that has been continuously registered with the Department as required by G.S. 143-355(e).

(b) To obtain certification under this section, a person must submit an application to the Commission and pay the annual fee prior to 1 January 1999. The Commission shall establish procedures and rules for receipt and approval of these applications.

(c) A well contractor who is certified under this section must continuously maintain the certification in good standing in order to remain certified. A certificate issued under this section that lapses, is suspended, or is revoked may not be renewed or reinstated. A person whose certification under this section lapses, is suspended, or is revoked must apply for certification by examination in order to be recertified.

Section 10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Well Contractors Certification Commission may adopt temporary rules to implement the provisions of this act.

Section 11. Sections 1, 3, 4, and 7 through 11 of this act are effective when they become law. Section 2 of this act is effective when it becomes law except that G.S. 87-98.4(a) and G.S. 87-98.12, as enacted by Section 2 of this act, become effective 1 January 1999. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act becomes effective 1 January 1999.

EXPLANATION OF HOUSE BILL 251:
Well Contractors Certification (2nd Edition)

TO: House Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 14, 1997
SPONSOR: Representative Culp
Recommendation of the Environmental Review Commission

House Bill 251 creates the Well Contractors Certification Commission, requires that well contractors be certified under the Well Contractors Certification Act, and makes various changes to the Well Construction Act.

Under current law, a person engaged in the well construction business must register annually with the Department of Environment, Health, and Natural Resources and must construct wells consistent with the requirements of the North Carolina Well Construction Act. This bill will repeal the registration requirement, effective January 1, 1999, and substitute a certification requirement.

Under the bill, a person engaging in the well construction business must be certified by the North Carolina Well Contractors Certification Commission, which is created in this bill. The Commission may establish different types of well contractor certifications based on the activities performed. To be certified, a person must meet minimum education, knowledge, and experience requirements for the classification in which the person desires to be certified. The certification is valid for one year. The Commission will establish minimum continuing education requirements that must be met before the certification can be renewed. The fees for certification can not exceed the following:

Examination Fee	$150
Annual certification fee	$350
Temporary certification fee	$100

The fees will be credited to a newly created Well Construction Fund. The Fund is created as a nonreverting account. Under current law, there is a $50 fee for the annual registration of well contractors. The bill provides that this fee will also be credited to this Fund.

The Commission will consist of 6 members in the well construction business appointed by the General Assembly and 1 public member appointed by the Governor. The Commission may adopt rules for the certification of well contractors, make final agency decisions regarding civil penalties assessed for violations of well certification laws, and adopt rules to secure federal aid for well contraction certification programs.

A person who has engaged in the well construction business since July 1, 1986, and who has been registered with the DEHNR since July 1, 1992, or who has been an employee of a company registered with DEHNR since July 1, 1992, will be grandfathered into the certification process. These people will not need to pass an examination as a condition of certification. A person working under the supervision of a certified well contractor and a person who constructs a well on land owned or lease by that person is exempt from the certification requirements of this bill.

The bill also makes the following changes in the Well Construction Act:

1. It repeals the current exemption for wells constructed by a person on land owned or leased by the person. Thus, under this bill, all wells must meet the specifications of the Well Construction Act.
2. A person who violates the Well Construction Act or the Well Construction Certification Act may be assessed a civil penalty of not more than $100 a day. Under current law, a penalty cannot be assessed until the person alleged to be in violation has been notified of the alleged violation and given an opportunity to take the remedial action described in the notice of noncompliance. If the person takes the remedial action within the time frame given, the penalty is not assessed. This bill removes this provision. Therefore, the civil penalty may be imposed regardless of whether or not the person undertakes the remedial action described in the notice.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 251 (Second Edition)

SHORT TITLE: Well Contractors Certification

SPONSOR(S): Representative Culp

FISCAL IMPACT

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

***Well Construction Fund* (created by this act)**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES *					
Registration Fee	$31,250				
Certification Renewal		$130,000	$135,000	$140,000	$145,000
Certification by Examination		$20,000	$2,500	$2,500	$2,500
Temporary Certification		$2,500	$2,500	$2,500	$2,500
Total	**$31,250**	**$152,500**	**$140,000**	**$145,000**	**$150,000**
EXPENDITURES	**$10,652**	**$96,752**	**$85,925**	**$88,115**	**$90,446**
POSITIONS:	0.0	2.0	2.0	2.0	2.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources, Division of Water Quality

EFFECTIVE DATE: When the act becomes law, except for G.S. 87-98(a), the certification requirement, and G.S. 87-98.14, injunctive relief, as enacted by Section 2, which become effective January 1, 1999, and Section 5 requiring registration fees to be credited to the Well Construction Fund, which becomes effective July 1, 1997, and Section 6 repealing the registration fee requirement, which becomes effective January 1, 1999.

* ***Revenue estimate based on the maximum fee allowed by the act.***

** ***See statement on page 3, under* Assumptions and Methodology *regarding the creation of the Well Construction Fund.***

- Annual Certification Renewal

The bill establishes a certification requirement for well contractors effective January 1, 1999 and sets the maximum annual certification fee charged by the commission at $200.00. However, the commission is authorized to set a lower renewal fee to more accurately reflect actual program costs. The department estimates that an annual certification fee of $125.00 is sufficient to cover the costs of the certification program.

All persons registered with the department for the 1997-98 fiscal year to perform well construction activities are expected to pay the certification fee beginning with the 1998-99 fiscal year. Again, the department expects the number of certifications to increase by 25 each year. Based on the number of annual certification renewals anticipated by the department, the projected revenue from the annual certification fee beginning with the 1998-99 fiscal year is reflected in the following table. The projected revenue from certifications based on a fee of $125.00 as recommended by the department is also included.

Revenue from Annual Certification Renewal	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# of Well Contractors	650	675	700	725
Maximum Annual Certification Revenue ($200.00)	130,000	135,000	140,000	145,000
Annual Certification Revenue Based on Projected Operating Requirements ($125.00)	81,250	84,375	87,500	90,625

- Certification by Examination

Any person performing well contractor activities who is not eligible for certification without examination must satisfactorily complete any training and examination requirements established by the commission. The bill authorizes the commission to charge up to $100.00 for the examination. Because the well contractor certification requirement is new, the department initially expects 200 persons will be required to seek certification by examination for the 1998-99 fiscal year. However, the number of persons certified annually by examination is expected to level off immediately to 25, beginning with the 1999-2000 fiscal year.

Revenue from Certification by Examination	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Examined	200	25	25	25
Maximum Examination Fee ($100.00)	20,000	2,500	2,500	2,500

- Temporary Certification

The bill also provides for temporary certification of persons approved by the commission. The department projects 25 persons will seek temporary certification each year. The commission may charge up to $100.00 for each temporary certification.

Revenue from Temporary Certifications	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
# Temporary Well Contractors	25	25	25	25
Maximum Temporary Certification Fee ($100.00)	2,500	2,500	2,500	2,500

Expenditures

The bill provides eighteen months for the commission to adopt permanent rules to meet the requirements of the bill, in accordance with the Administrative Procedures Act, before the certification requirement goes into effect January 1, 1999. Until such time, costs incurred by the commission are expected to be limited to allowable per diem, travel and subsistence for commission members, clerical support and operational expenses, such as postage, telephone and printing.

The commission is expected to meet more frequently during the first two years to adopt formal rules governing the certification of well contractors; therefore per diem and travel expenses for the commission will be higher the first two years. For the purpose of estimating commission expenses, it is assumed the commission will hold twelve meetings in 1997-98, eight meetings in 1998-99 and quarterly meetings each year thereafter.

According to the department, additional staff support will not required until the 1998-99 fiscal year, when the certification requirement becomes effective. The department will use existing staff to provide any clerical support needed by the commission during the 1997-98 fiscal year. Beginning with the 1998-99 fiscal year, the department anticipates the need for two full-time staff to support the commission and the certification program. An Office Assistant III will provide clerical support to the commission, as well as manage and maintain the certification records. A hydrogeologist will also be employed to provide technical expertise to the commission, to include assistance with certification oversight and enforcement.

The total estimated budget requirements for the Well Contractors Certification program are outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Office Assistant III		23,025	23,749	24,520	25,340
Hydrogeologist I		40,958	42,292	43,711	45,222
Total Salaries & Benefits *	-	63,984	66,041	68,231	70,562
Positions		2.0	2.0	2.0	2.0
Operating Expenses	2,000	27,000	17,000	17,000	17,000
Commission Expenses	8,652	5,768	2,884	2,884	2,884
Total Requirements	**$10,652**	**$96,752**	**$85,925**	**$88,115**	**$90,446**

** Beginning with the 1998-99 fiscal year, salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates used are based on forecasts by Data Resources, Inc.*

TECHNICAL CONSIDERATIONS:

The bill allows the commission and the Secretary of DEHNR to provide training for well contractors in cooperation with educational institutions, professional associations and others. If the commission and the Secretary decide to make training and continuing education offerings available to well contractors, the costs associated with those offerings will be funded with receipts from the Well Construction Fund, as required by the bill.

Until the scope of any proposed educational requirements/offerings is defined, the costs of implementing training and education programs for contractors cannot be estimated. However, according to the department, some professional associations offer well drilling review courses at a cost of $100 per course. A more comprehensive training program is expected to require additional staff and operating support.

SOURCES OF DATA:

The Department of Environment, Health, and Natural Resources; Division of Water Quality, Groundwater Section

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Mona Moon

APPROVED BY: Tom Covington
DATE: June 11, 1997

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-17-96

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
Richard Whisnant	DEHNR
Sandy Sands	WCSR
BRUCE NICHOLSON	NC DEHNR/DWM
Dwight "Buster" Dellinger	N.C. Groundwater Assoc.
Arthur Mouberry	DEHNR- DWQ Groundwater Section
Paul Sloan	OSBM
James Ramsey	NCSS
Jane O Gray	DOJ
Charles Case	Hunton & Williams
Leslie DeWaegen	NCCBI
BILL SCOGGIN	NCBA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-17-96

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cole	BPMHL
[illegible]	~~NCHA~~
John Kane	~~PTLA~~
Roslyn Sawtell	lobbyist
Amy Tindall	Hunton & Williams
Sabra Faires	NC Dept. of Revenue
[illegible]	CCNC / Sierra Club
Nathaniel Mund	CCNC
Bob High	Dept State Treas.
Andy Romanet	N.C.L.M.
R. ROGERS	FHMR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-17-96

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Quille Powell	City of Durham
LEIGHTON ROPER	ZDA, PA
Jeanne E Wrinn	EGHDS
Francine Weiss AL	Bone & Assoc.
PERRI MORGAN	NFIB
Tom Duncan	UCSK

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, July 17, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**251** Well Contractors Certification
Sequential Referral: None
Recommended Referral: None

H.B.(CS)**722** Beaufort County Local Act
Sequential Referral: None
Recommended Referral: None

H.B.(CS#2)**1121** Brownfields Property Reuse Act
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1 ,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS) **96** Intangibles Tax Remedy
Draft Number: PCS8260
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment: None

Attachment #4

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, July 22, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**847** Addit. Powers/Certain Water Auth.

Draft Number:	PCS2370
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Bill taken up at 7-17-97 Sen Finance Meeting

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 23, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on July 23, 1997, with Senator Kerr presiding. There were 23 committee members present.

H.B. 859 - Various Room Tax Changes

Representative Redwine was recognized to explain this bill. Senator Hoyle offered an amendment which was adopted on his motion. On motion by Senator Albertson, the bill, as amended, was given a "favorable" report and will be rolled into a new senate committee substitute. Copy of bill, amendment, senate committee substitute and explanation included in the minutes.

H.B. 990 - Exempt Certain Nonprofit Utilities

Senator Phillips was recognized to explain this bill and made a motion that a proposed committee substitute be adopted. The motion carried and Senator Phillips explained the committee substitute. At the conclusion of his explanation, James Little with the public Staff of the North Carolina Utilities Commission, was introduced to comment on this bill. R. E. Schley, representing the North Carolina Rural Water Association was recognized and spoke in support of this bill. Senator Kerr announced that this bill would not be voted on today and would be discussed further and voted on at a later date. Copy of bill, committee substitute and explanation included in the minutes.

S.B. 956 - Venture Capital Investment Incentive

Representative Wilkins was recognized to explain this bill since he has an identical House Bill. Senator Hoyle moved that a proposed committee substitute be adopted and the motion carried. At the conclusion of Representative Wilkins's explanation of the bill the following were recognized to speak in support of this bill:

Bill Glynn, Southeastern Interactive Technology Funds

Scott Daughtery, North Carolina Business and Technology Development Center

Daniel R. Schultz, Coopers & Lybrand CPA Firm

Senator Kerr asked for questions from the committee members to the speakers and also to Representative Wilkins. Senator Hoyle was recognized and spoke in support of the

venture capital concept and how the needs in the state could be addressed. After a lengthy question and answer session, staff was asked to furnish additional information concerning venture capital for a later meeting. Representative Wilkins was recognized to wrap up discussion on this bill for today. Copy of bill, committee substitute, explanation and other information included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

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

H.B. Bill 225 on the Agenda was not heard at the committee meeting.

Attachment # 1

AGENDA

SENATE FINANCE COMMITTEE

July 23, 1997
8:30 A.M. - Room 544

S.B. 956 - Venture Capital Investment Incentive. - Sen. Hoyle

H.B. 225 - Dry-Cleaning Solvent Cleanup Act.. - Rep. Weatherly

H.B. 859 - Various Room Tax Changes. - Rep. Redwine

H.B. 990 - Exempt Certain Nonprofit Utilities. - Rep. Church

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 859
Committee Substitute Favorable 7/3/97
Committee Substitute #2 Favorable 7/10/97

Short Title: Various Room Tax Changes. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE BRUNSWICK COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO AUTHORIZE CERTAIN MUNICIPALITIES IN BRUNSWICK COUNTY TO LEVY OR INCREASE LOCAL OCCUPANCY TAXES, AND TO AUTHORIZE PERSON COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Brunswick County occupancy tax. (a) Authorization and scope. The Brunswick County Board of Commissioners may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the county that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose, or to accommodations subject to a municipal room occupancy tax at the rate of six percent (6%).

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. Brunswick County shall, on a monthly basis, remit the net proceeds of the occupancy tax to the Brunswick Tourism Development Authority. The Authority shall use the funds remitted to it under this subsection to promote travel and tourism in Brunswick County. No more than ten percent (10%) of the funds remitted to the Authority under this subsection may be used for the Authority's administrative expenses, including salaries and benefits.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

Section 2. Brunswick Tourism Development Authority. (a) Appointment and membership. When the board of commissioners of Brunswick County adopts a resolution levying a room occupancy tax under Section 1 of this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have 10 members appointed by the Brunswick County Commissioners as follows:

(1) Five individuals who are currently involved in the promotion of travel and tourism, selected by the Brunswick County Commissioners.

(2) Five individuals selected jointly by the South Brunswick Islands Chamber of Commerce and the Southport-Oak Island Chamber of Commerce.

The resolution shall provide for the members' terms of office and for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair. Members of the Authority shall serve without compensation.

The Authority shall meet monthly and shall adopt rules of procedure to govern its meetings. The Finance Officer for Brunswick County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 1 of this act to promote travel and tourism in Brunswick County as provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 3. County administrative provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, reads as rewritten:

"(b) This section applies only to ~~Madison and Nash~~ Brunswick, Madison, Nash, and Person Counties."

Section 4. Conforming change. Section 2(a2) of Chapter 664 of the 1991 Session Laws, as enacted by Chapter 617 of the 1993 Session Laws, is repealed.

Section 5. Municipal administrative provisions. (a) Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. -- This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term 'city' means a municipality.

(b) Levy. -- A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is

subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. -- A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to the municipalities in Brunswick County.

Section 6. Shallotte occupancy tax. (a) Authorization and scope. The Board of Aldermen of the Town of Shallotte may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The Town of Shallotte shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Shallotte Tourism Development Authority. The Authority shall use at least one-half of the funds remitted to it under this subsection to promote travel and tourism in Shallotte and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the

term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

Section 7. Shallotte Tourism Development Authority. (a) Appointment and membership. When the Board of Aldermen of the Town of Shallotte adopts a resolution levying a room occupancy tax under Section 6 of this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have five members appointed by the board of aldermen. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Aldermen of the Town of Shallotte shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Shallotte shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 6 of this act for the purposes provided in Section 6 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the Board of Aldermen of the Town of Shallotte on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 8. Caswell Beach occupancy tax changes. Section 1 of Chapter 664 of the 1991 Session Laws reads as rewritten:

"Section 1. Caswell Beach Occupancy Tax. (a) Authorization and Scope. The Board of Commissioners of the Town of Caswell Beach may ~~by resolution, after not less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations within the town that are subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Caswell Beach may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Town of Caswell Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The town shall design, print, and furnish to all appropriate businesses in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer the occupancy tax levied under this act. A tax levied under this act is due and payable to the town tax collector in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the town tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

~~(e)~~(c) Use of Proceeds. The town may use the proceeds of a tax levied under ~~this act~~ subsection (a) of this section only for tourism-related expenditures. As used in this ~~act,~~ section, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The town may use the proceeds of a tax levied under subsection (a1) of this section only for beach renourishment.

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. The Board of Commissioners of the Town of Caswell Beach may by resolution repeal a tax levied under this act. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 9. Holden Beach occupancy tax changes. Section 1 of Chapter 963 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Holden Beach Town Council may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~ 105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of whether the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Holden Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Holden Beach Town Council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the Holden Beach tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

The tax collector may collect any unpaid taxes levied under this ~~act~~ section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e)~~ (c) Distribution and use of tax revenue. The tax collector shall remit the proceeds of this tax to the town on a monthly basis. The ~~funds received by the town pursuant to this act~~ proceeds of the tax levied under subsection (a) of this section shall be allocated to a special fund and used only for tourism-related expenditures.

As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of water front erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The town may use the proceeds of a tax levied under subsection (a1) of this section only for beach renourishment.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Holden Beach Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 10. Ocean Isle Beach occupancy tax changes. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws and Chapter 857 of the 1989 Session Laws, as it relates to the Town of Ocean Isle Beach only, is reenacted and rewritten as Section 11 of this act.

Section 11. Ocean Isle Beach occupancy tax. (a) Authorization and scope. The Board of Commissioners of the Town of Ocean Isle Beach may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages, whether or not the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax.

(b) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Ocean Isle Beach may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The town council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(c) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Distribution and use of tax revenue. The Town of Ocean Isle Beach may use the proceeds of the tax levied pursuant to subsection (a) of this section only for tourism-related expenditures. As used in this section, "tourism-related expenditures" includes any of the following expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. The term does not include, however, expenditures for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The Town of Ocean Isle Beach may use the proceeds of the tax levied pursuant to subsection (b) of this section only for beach renourishment.

Section 12. Sunset Beach occupancy tax changes. Section 1 of Chapter 956 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Sunset Beach Town Council may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~ 105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of whether the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Sunset Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Town of Sunset Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the~~

~~town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the Sunset Beach tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

The tax collector may collect any unpaid taxes levied under this ~~act~~ section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e)~~ (c) Distribution and use of tax revenue. The tax collector shall remit the proceeds of this tax to the town on a monthly basis. The ~~funds received by the town pursuant to this act shall be allocated~~ town shall allocate the proceeds of the tax levied pursuant to subsection (a) of this section to a special fund and ~~used~~ shall use them only for tourism-related expenditures. As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of water front erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The town may use the proceeds of the tax levied pursuant to subsection (a1) of this section only for beach renourishment.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Sunset Beach Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 13. Yaupon Beach occupancy tax changes. Section 1 of Chapter 820 of the 1991 Session Laws reads as rewritten:

"Section 1. Yaupon Beach Occupancy Tax. (a) Authorization and Scope. The Board of Commissioners of the Town of Yaupon Beach may ~~by resolution, after not less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations within the town that are subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Yaupon Beach may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Town of Yaupon Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The town shall design, print, and furnish to all appropriate businesses in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer the occupancy tax levied under this act. A tax levied under this act is due and payable to the town tax collector in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the town tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

~~(e)~~ (c) Use of Proceeds. The town may use the proceeds of a tax levied under ~~this act~~ subsection (a) of this section only for tourism-related expenditures. As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The town may use the proceeds of a tax levied under subsection (a1) of this section only for beach renourishment.

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. The Board of Commissioners of the Town of Yaupon Beach may by resolution repeal a tax levied under this act. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the~~

~~effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 14. Person County occupancy tax. (a) Authorization and scope. The Person County Board of Commissioners may levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).

This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. Person County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Person Tourism Development Authority. Of the net proceeds that accrue during the first four years that a tax is levied under this section, the Authority may use up to two-thirds only for the following tourism-related expenditures: (i) constructing or operating the Person County Historical Museum, (ii) developing Lake Mayo for fishing tournaments, skiing tournaments, and other activities designed to attract tourists to the lake from outside the county, and (iii) supporting the May Festival and other festivals designed to attract tourists from outside the county. The Authority shall use the remaining net proceeds that accrue during the first four years that a tax is levied under this section only to promote travel and tourism in Person County.

Of the net proceeds that accrue after this four-year period, the Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Person County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred by the Authority in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a

county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

Section 15. Person Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under Section 17 of this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act.

The Authority shall be composed of six members, three appointed by the Person County Board of Commissioners and three appointed by the Roxboro City Council. One of the three members appointed by each governing body must be an owner or manager of a Person County hotel or motel. The remaining members must be individuals who are currently active in the promotion of travel and tourism in the county. The resolution shall determine the compensation, if any, to be paid to members of the Authority.

The initial terms of the members who are owners or managers of a hotel or motel shall be three years. Each governing body shall designate one of its remaining appointees to serve an initial term of two years and the other to serve an initial term of one year. Thereafter, all terms shall be three years. Vacancies shall be filled in the same manner as original appointments, and members appointed to fill vacancies shall serve for the remainder of the unexpired term.

At its first meeting and at the first meeting of each calendar year, the membership of the Authority shall elect one member to serve as chair until the first meeting of the following calendar year. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Person County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 17 of this act for the purposes provided in Section 17 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 16. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 859

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

H859-ARB-7/22

Date July 23 ,1997

Comm. Sub. [YES]
Amends Title []
Third Edition

Senator Hoyle

moves to amend the bill on page 15, lines 5 and 27, by deleting "Section 17" each time it appears and substituting "Section 14";

and on page 7, line 11; page 9, line 9; page 12, line 2; and on page 13, line 34, by deleting the word "renourishment." and substituting the phrase "renourishment and protection." each time it appears;

and on page 10, line 16, by deleting the word "renourishment." and substituting the phrase "renourishment and protection.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 859
Committee Substitute Favorable 7/3/97
Committee Substitute #2 Favorable 7/10/97
Proposed Senate Committee Substitute H859-PCS7357

Short Title: Various Room Tax Changes. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE BRUNSWICK COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO AUTHORIZE CERTAIN MUNICIPALITIES IN BRUNSWICK COUNTY TO LEVY OR INCREASE LOCAL OCCUPANCY TAXES, AND TO AUTHORIZE PERSON COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Brunswick County occupancy tax. (a) Authorization and scope. The Brunswick County Board of Commissioners may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the county that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose, or to accommodations subject to a municipal room occupancy tax at the rate of six percent (6%).

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. Brunswick County shall, on a monthly basis, remit the net proceeds of the occupancy tax to the Brunswick Tourism Development Authority. The Authority shall use the funds remitted to it under this subsection to promote travel and tourism in Brunswick County. No more than ten percent (10%) of the funds remitted to the Authority under this subsection may be used for the Authority's administrative expenses, including salaries and benefits.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

Section 2. Brunswick Tourism Development Authority. (a) Appointment and membership. When the board of commissioners of Brunswick County adopts a resolution levying a room occupancy tax under Section 1 of this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have 10 members appointed by the Brunswick County Commissioners as follows:

(1) Five individuals who are currently involved in the promotion of travel and tourism, selected by the Brunswick County Commissioners.

(2) Five individuals selected jointly by the South Brunswick Islands Chamber of Commerce and the Southport-Oak Island Chamber of Commerce.

The resolution shall provide for the members' terms of office and for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair. Members of the Authority shall serve without compensation.

The Authority shall meet monthly and shall adopt rules of procedure to govern its meetings. The Finance Officer for Brunswick County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 1 of this act to promote travel and tourism in Brunswick County as provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 3. County administrative provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, reads as rewritten:

"(b) This section applies only to ~~Madison and Nash~~ Brunswick, Madison, Nash, and Person Counties."

Section 4. Conforming change. Section 2(a2) of Chapter 664 of the 1991 Session Laws, as enacted by Chapter 617 of the 1993 Session Laws, is repealed.

Section 5. Municipal administrative provisions. (a) Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. -- This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term 'city' means a municipality.

(b) Levy. -- A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is

subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. -- A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to the municipalities in Brunswick County.

Section 6. Shallotte occupancy tax. (a) Authorization and scope. The Board of Aldermen of the Town of Shallotte may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The Town of Shallotte shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Shallotte Tourism Development Authority. The Authority shall use at least one-half of the funds remitted to it under this subsection to promote travel and tourism in Shallotte and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the

term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

Section 7. Shallotte Tourism Development Authority. (a) Appointment and membership. When the Board of Aldermen of the Town of Shallotte adopts a resolution levying a room occupancy tax under Section 6 of this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have five members appointed by the board of aldermen. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The Board of Aldermen of the Town of Shallotte shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Shallotte shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 6 of this act for the purposes provided in Section 6 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the Board of Aldermen of the Town of Shallotte on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 8. Caswell Beach occupancy tax changes. Section 1 of Chapter 664 of the 1991 Session Laws reads as rewritten:

"Section 1. Caswell Beach Occupancy Tax. (a) Authorization and Scope. The Board of Commissioners of the Town of Caswell Beach may ~~by resolution, after not less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations within the town that are subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Caswell Beach may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Town of Caswell Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The town shall design, print, and furnish to all appropriate businesses in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer the occupancy tax levied under this act. A tax levied under this act is due and payable to the town tax collector in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the town tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

~~(e)~~(c) Use of Proceeds. The town may use the proceeds of a tax levied under ~~this act~~ subsection (a) of this section only for tourism-related expenditures. As used in this ~~act,~~ section, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The town may use the proceeds of a tax levied under subsection (a1) of this section only for beach renourishment and protection.

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. The Board of Commissioners of the Town of Caswell Beach may by resolution repeal a tax levied under this act. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 9. Holden Beach occupancy tax changes. Section 1 of Chapter 963 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Holden Beach Town Council may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~ 105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of whether the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Holden Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Holden Beach Town Council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the Holden Beach tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

The tax collector may collect any unpaid taxes levied under this ~~act~~ section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e)~~ (c) Distribution and use of tax revenue. The tax collector shall remit the proceeds of this tax to the town on a monthly basis. The ~~funds received by the town pursuant to this act~~ proceeds of the tax levied under subsection (a) of this section shall be allocated to a special fund and used only for tourism-related expenditures.

As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of water front erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The town may use the proceeds of a tax levied under subsection (a1) of this section only for beach renourishment and protection.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Holden Beach Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 10. Ocean Isle Beach occupancy tax changes. Part IX of Chapter 908 of the 1983 Session Laws, as amended by Chapter 985 of the 1983 Session Laws and Chapter 857 of the 1989 Session Laws, as it relates to the Town of Ocean Isle Beach only, is reenacted and rewritten as Section 11 of this act.

Section 11. Ocean Isle Beach occupancy tax. (a) Authorization and scope. The Board of Commissioners of the Town of Ocean Isle Beach may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages, whether or not the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax.

(b) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Ocean Isle Beach may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The town council may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(c) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

The tax collector may collect any unpaid taxes levied under this section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

(d) Distribution and use of tax revenue. The Town of Ocean Isle Beach may use the proceeds of the tax levied pursuant to subsection (a) of this section only for tourism-related expenditures. As used in this section, "tourism-related expenditures" includes any of the following expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. The term does not include, however, expenditures for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The Town of Ocean Isle Beach may use the proceeds of the tax levied pursuant to subsection (b) of this section only for beach renourishment and protection.

Section 12. Sunset Beach occupancy tax changes. Section 1 of Chapter 956 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Sunset Beach Town Council may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the town that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~ 105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of whether the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Sunset Beach Town Council may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Town of Sunset Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by~~

~~the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the Sunset Beach tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

The tax collector may collect any unpaid taxes levied under this ~~act~~ section through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The town council may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

~~(e)~~ (c) Distribution and use of tax revenue. The tax collector shall remit the proceeds of this tax to the town on a monthly basis. The ~~funds received by the town pursuant to this act shall be allocated~~ town shall allocate the proceeds of the tax levied pursuant to subsection (a) of this section to a special fund and ~~used~~ shall use them only for tourism-related expenditures. As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of water front erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The town may use the proceeds of the tax levied pursuant to subsection (a1) of this section only for beach renourishment and protection.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Sunset Beach Town Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 13. Yaupon Beach occupancy tax changes. Section 1 of Chapter 820 of the 1991 Session Laws reads as rewritten:

"Section 1. Yaupon Beach Occupancy Tax. (a) Authorization and Scope. The Board of Commissioners of the Town of Yaupon Beach may ~~by resolution, after not less than 10 days' public notice and a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of accommodations within the town that are subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and from the rental of private residences and cottages within the town that are exempt from the sales tax imposed under G.S. 105-164.4(a)(3) solely because they are rented for less than 15 days.

(a1) Authorization of Additional Tax. In addition to the tax authorized by subsection (a) of this section, the Board of Commissioners of the Town of Yaupon Beach may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The Town of Yaupon Beach may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The occupancy tax levied under this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The town shall design, print, and furnish to all appropriate businesses in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer the occupancy tax levied under this act. A tax levied under this act is due and payable to the town tax collector in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, or corporation liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the town tax collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional penalty of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

~~(e)~~ (c) Use of Proceeds. The town may use the proceeds of a tax levied under ~~this act~~ subsection (a) of this section only for tourism-related expenditures. As used in this act, the term 'tourism-related expenditures' includes the following types of expenditures: criminal justice system, fire protection, public facilities and utilities, health facilities, solid waste and sewage treatment, and the control and repair of waterfront erosion. These funds may not be used for services normally provided by the town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the town to attract and provide for tourists.

The town may use the proceeds of a tax levied under subsection (a1) of this section only for beach renourishment and protection.

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. The Board of Commissioners of the Town of Yaupon Beach may by resolution repeal a tax levied under this act. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the~~

~~effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 14. Person County occupancy tax. (a) Authorization and scope. The Person County Board of Commissioners may levy a room occupancy tax of up to five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).

This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. Person County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Person Tourism Development Authority. Of the net proceeds that accrue during the first four years that a tax is levied under this section, the Authority may use up to two-thirds only for the following tourism-related expenditures: (i) constructing or operating the Person County Historical Museum, (ii) developing Lake Mayo for fishing tournaments, skiing tournaments, and other activities designed to attract tourists to the lake from outside the county, and (iii) supporting the May Festival and other festivals designed to attract tourists from outside the county. The Authority shall use the remaining net proceeds that accrue during the first four years that a tax is levied under this section only to promote travel and tourism in Person County.

Of the net proceeds that accrue after this four-year period, the Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Person County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred by the Authority in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a

county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures.

Section 15. Person Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under Section 14 of this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act.

The Authority shall be composed of six members, three appointed by the Person County Board of Commissioners and three appointed by the Roxboro City Council. One of the three members appointed by each governing body must be an owner or manager of a Person County hotel or motel. The remaining members must be individuals who are currently active in the promotion of travel and tourism in the county. The resolution shall determine the compensation, if any, to be paid to members of the Authority.

The initial terms of the members who are owners or managers of a hotel or motel shall be three years. Each governing body shall designate one of its remaining appointees to serve an initial term of two years and the other to serve an initial term of one year. Thereafter, all terms shall be three years. Vacancies shall be filled in the same manner as original appointments, and members appointed to fill vacancies shall serve for the remainder of the unexpired term.

At its first meeting and at the first meeting of each calendar year, the membership of the Authority shall elect one member to serve as chair until the first meeting of the following calendar year. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Person County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under Section 14 of this act for the purposes provided in Section 14 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 16. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 859:
Various Room Tax Changes (3rd Edition)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 22, 1997
SPONSOR: Representative Redwine

House Bill 859 contains the following provisions:

- Brunswick County is authorized to levy a 1% tax. The net proceeds will be remitted monthly to the Tourism Development Authority, which will use all of the net proceeds to promote tourism. The Tourism Development Authority may use no more than 10% for administrative expenses, including salary and benefits. (Section 1)
- The Brunswick County tax would not apply to any accommodations subject to a 6% municipal occupancy tax (Bald Head Island). (Sections 1 and 4)
- The Brunswick Tourism Development Authority will consist of 10 members, 5 selected by the county commissioners and 5 selected jointly by the two chambers of commerce. It will meet monthly and members will receive no compensation. (Section 2)
- The Town of Shallotte is authorized to levy a 3% room occupancy tax. Proceeds (net of the cost of collection) are distributed to a five-member tourism development authority, which will use ½ to promote travel and tourism and ½ for tourist-related expenditures. (Sections 6 and 7)
- The following municipalities are authorized to levy an additional 2% occupancy tax to be used for beach renourishment: Caswell Beach (Section 8), Holden Beach (Section 9), Ocean Isle Beach (Sections 10 and 11), Sunset Beach (Section 12) and Yaupon Beach (Section 13).
- Person County is authorized to levy a 5% occupancy tax. The net proceeds will be remitted to a Tourism Development Authority. For the first four years the tax is in effect, up to 2/3 may be used for specified tourist-related expenditures and the remainder must be used to promote tourism. After the end of this four-year period, at least 2/3 must be used to promote tourism and the rest may be used for tourist-related expenditures. (Sections 14 and 15)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 990
Committee Substitute Favorable 4/24/97
Third Edition Engrossed 4/29/97

Short Title: Exempt Certain Nonprofit Utilities. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED WATER OR SEWER UTILITIES FROM REGULATION BY THE UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3(23) reads as rewritten:

"(23) a. 'Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation;

2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public

for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than ~~10~~ 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for ~~10~~ 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than ~~10~~ 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such ~~10~~ 15 or more building lots, without regard to the number of actual customers connected;

3. Transporting persons or household goods by street, suburban or interurban bus or railways for the public for compensation;
4. Transporting persons or household goods by railways or motor vehicles, or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.

b. The term 'public utility' shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

c. The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.

d. The term 'public utility,' except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership ~~corporation or nonprofit water membership or consumer-owned corporations financed by the Farmers~~

~~Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer-owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation;~~ corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.

e. The term 'public utility' shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).

f. The term 'public utility' shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.

g. The term 'public utility' shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to

occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.

h. The term 'public utility' shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of the electricity supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.

i. The term 'public utility' shall not include the State, the Office of the State Controller, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.

j. The term 'public utility' shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 990
Committee Substitute Favorable 4/24/97
Third Edition Engrossed 4/29/97
Proposed Committee Substitute H990-PCS2369

Short Title: Exempt Certain Nonprofit Utilities. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED WATER OR SEWER UTILITIES AND CERTAIN SMALL WATER OR SEWER UTILITIES FROM REGULATION BY THE UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3(23) reads as rewritten:

"(23) a. 'Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation;

2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than ~~10~~ 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for ~~10~~ 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than ~~10~~ 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such ~~10~~ 15 or more building lots, without regard to the number of actual customers connected;
3. Transporting persons or household goods by street, suburban or interurban bus or railways for the public for compensation;
4. Transporting persons or household goods by railways or motor vehicles, or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.

b. The term 'public utility' shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

c. The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.

d. The term 'public utility,' except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership

~~corporation or nonprofit water membership or consumer-owned corporations financed by the Farmers Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer-owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation;~~ corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.

e. The term 'public utility' shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).

f. The term 'public utility' shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.

g. The term 'public utility' shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.

h. The term 'public utility' shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of the electricity supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.

i. The term 'public utility' shall not include the State, the Office of the State Controller, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.

j. The term 'public utility' shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies."

Section 2. Article 6 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-110.5. Commission may exempt certain nonprofit and consumer-owned water or sewer utilities.**

The Commission may exempt any water or sewer utilities owned by nonprofit membership or consumer-owned corporations from regulation under this Chapter, subject to those conditions the Commission deems appropriate, if:

(1) The members or consumer-owners of the corporation elect the governing board of the corporation pursuant to the corporation's articles of incorporation and bylaws; and

(2) The Commission finds that the organization and the quality of service of the utility are adequate to protect the public interest to the extent that additional regulation is not required by the public convenience and necessity."

Section 3. G.S. 62-300(a) is amended by adding a new subdivision to read:

"(15) One hundred dollars ($100.00) for each application for exemption filed by nonprofit and consumer-owned water or sewer utilities pursuant to G.S. 62-110.5."

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

EXPLANATION OF HOUSE BILL 990:
Exempt Certain Nonprofit Utilities (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 22, 1997
SPONSOR: Representative Church

The proposed committee substitute for **House Bill 990** does two things:

1. It provides that the Utilities Commission may exempt nonprofit and consumer-owned water or sewer utilities from regulation.
2. It increases the regulatory exemption for utilities selling water to less than ten residential customers to utilities selling water to less than 15 residential customers.

Under current law, nonprofit membership or consumer-owned corporations that supply water are exempt from regulation by the Utilities Commission if both of the following conditions are met:

- A federal financing agency exercises substantial control over and regulation of the corporation's rates and terms and conditions of service.
- The members or consumer-owners elect the governing board of the corporation.

The Utilities Commission and legislative staff recently learned, however, that no federal financing agency does, or ever has, exercised such control. Therefore, no nonprofit membership or consumer-owned corporation can possibly qualify for the exemption from regulation under the current law.

To rectify this problem, Section 1 deletes the current exemption. Section 2 provides that the Utilities Commission may exempt nonprofit and consumer-owned water or sewer utilities from regulation, subject to conditions the Commission deems appropriate, if both of the following conditions are met:

- The members or consumer-owners elect the governing board of the corporation.
- The Commission finds that the organization and quality of service of the utility are adequate to protect the public interest.

The exemption will be granted on a case-by-case basis. To obtain an exemption, a nonprofit or consumer-owned water or sewer utility would need to apply to the Commission. Section 3 imposes a $100 fee for each application for exemption filed by a nonprofit or consumer-owned water or sewer utility.

Section 1 also increases the regulatory exemption for utilities that sell water to less than ten residential customers. The exemption will now apply to those selling to less than 15 residential customers. This will match exemptions allowed by the Department of Environment, Health, and Natural Resources.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 956*

Short Title: Venture Capital Investment Incentive. (Public)

Sponsors: Senators Hoyle, Cooper, and Odom.

Referred to: Rules and Operations of the Senate.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE CAPITAL INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN INSURANCE PREMIUMS TAX CREDIT FOR THESE INVESTMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53A-35 through G.S. 53A-37 are designated Part 1 of Article 3 of Chapter 53A of the General Statutes, entitled "General Provisions" and the remainder of Article 3 of Chapter 53A of the General Statutes is designated Part 2, entitled "North Carolina Enterprise Corporations".

Section 2. Article 3 of Chapter 53A of the General Statutes, as amended by this act, is further amended by adding a new Part to read:

"Part 3. Certified North Carolina Capital Companies.

"**§ 53A-70. Requirements for certification of a certified North Carolina capital company.**

(a) Initial Certification. -- In order to be initially certified as a certified North Carolina capital company, a company must satisfy the following requirements:

(1) It is a partnership, corporation, trust, or limited liability company, whether for-profit or nonprofit, whose primary business activity is the investment of cash in approved business ventures.

(2) Its cash, marketable securities, and other liquid assets equal at least five hundred thousand dollars ($500,000).

(3) Its officers and its board of directors, partners, trustees, or managers are thoroughly acquainted with the requirements of this Part.

(4) No insurance company or affiliate of an insurance company is a managing general partner of the certified North Carolina capital company or controls the direction of investments of the certified North Carolina capital company. This subdivision does not preclude an insurance company or any other party from exercising its legal rights and remedies, which may include interim management of a certified North Carolina capital company, in the event that a certified North Carolina capital company is in default of its statutory obligations or its contractual obligations to the insurance company or other party.

(b) Continuing Certification. -- To remain certified as a certified North Carolina capital company, the company must satisfy the following requirements:

(1) Within three years after the date it was initially certified, at least thirty percent (30%) of the certified capital invested in the company must be placed in approved investments.

(2) Within five years after the date it was initially certified, at least fifty percent (50%) of the certified capital invested in the company must be placed in approved investments.

(3) It shall not invest in a single approved business venture an amount that is more than fifteen percent (15%) of the total certified capital under the company's management at the time of the investment.

(4) No insurance company or affiliate of an insurance company is a managing general partner of the certified North Carolina capital company or controls the direction of investments of the certified North Carolina capital company. This subdivision does not preclude an insurance company or any other party from exercising its legal rights and remedies, which may include interim management of a certified North Carolina capital company, in the event that a certified North Carolina capital company is in default of its statutory obligations or its contractual obligations to the insurance company or other party.

(c) Permanent Certification. -- A certified North Carolina capital company that has satisfied the requirements of G.S. 53A-70(b) and has invested all of its certified capital in approved investments, as demonstrated by its most recent financial statement and report filed in accordance with G.S. 53A-71, qualifies for permanent certification and is no longer required to obtain continuing certification as required in G.S. 53A-71. A certified North Carolina capital company that has qualified for permanent certification must continue to submit annual financial statements and reports under G.S. 53A-71 for three years after it qualifies for permanent certification.

"**§ 53A-71. Procedure for initial and continuing certification; reports.**

(a) Initial Certification. -- In order to be initially certified as a certified North Carolina capital company, a company must file an application with the Department and pay the initial certification fee. The application shall include any information

and supporting documents required by the Secretary of State to determine whether the company qualifies for initial certification. Within 60 days after an application is filed, the Department shall determine whether the applicant qualifies for initial certification and shall either issue the certification or shall refuse the certification and notify the applicant in detail of the grounds for the refusal, including suggestions for the removal of those grounds.

The Department shall review and approve or reject applications in the order submitted. If more than one application is received by the Department on the same day, all applications received on that day shall be reviewed and approved simultaneously, except in the case of incomplete applications or applications for which additional information is requested by the Department and is not supplied by the applicant within the allowable time limits established by the Department. If more than one applicant is certified on the same day, the Department shall ensure that all applicants certified on that day are notified of certification at the same time.

(b) Continuing Certification. -- A certified North Carolina capital company that has not qualified for permanent certification must, in order to remain certified, submit an annual application for continued certification and pay the annual review fee. The request shall include any information and supporting documents required by the Secretary of State to determine whether the company qualifies for continued certification.

The Department shall conduct an annual review of each certified North Carolina capital company that has not qualified for permanent certification to determine if the company is in compliance with the requirements for initial and continuing certification and to ensure that the company's investments are in compliance with this Part. The review shall be based upon the company's financial statements and other information submitted in accordance with this section.

(c) Application Forms; Fees. -- Applications for initial and continuing certification under this section shall be in the form required by the Secretary of State. The Secretary of State shall prepare blank forms for the applications. Each application shall be signed by the owners, a manager, or an executive officer of the company. There shall be annexed to the application the affirmation of the person making the application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.' A person who submits a false application is guilty of a Class 1 misdemeanor.

The Secretary of State shall charge an applicant a fee of one thousand dollars ($1,000) for initial certification as a certified North Carolina capital company and a fee of one thousand dollars ($1,000) for annual review for continuing certification as a certified North Carolina capital company. Fees collected under this section shall be applied to the cost of administering this Part.

(d) Periodic Reports. -- Each certified North Carolina capital company shall provide the Department an annual audited financial statement and report that includes an opinion of an independent certified public accountant. The audit shall address the methods of operation and conduct of the business of the company to

determine whether the company has complied with this Part and whether the cash invested in the company has been invested as required by this Part. The audit shall also determine whether each business in which the company has invested is an approved business venture as defined in this Article. In addition, each certified North Carolina capital company shall provide the Department a midyear, unaudited update of its annual financial statement and report. The reports and updates shall be in the form prescribed by the Secretary of State and shall include any information required by the Secretary of State about the company and about the approved business ventures in which it has invested.

A certified North Carolina capital company that has not qualified for permanent certification shall submit the annual financial statement and report and the midyear update on the due dates specified by the Department. A certified North Carolina capital company that has qualified for permanent certification is no longer required to submit midyear updates but shall continue to submit the annual financial statement and report on the due dates specified by the Department for three years after the company qualifies for permanent certification. Thereafter, no additional financial statements and reports are required under this subsection.

"**§ 53A-72. Distributions; maximum interest rate.**

(a) Distributions. -- A certified North Carolina capital company may make qualified distributions at any time. A certified North Carolina capital company may, without restriction, make distributions and payments to debt holders with respect to debt owed them by the company, but no distributions or payments may be made to an equity holder, or any of its affiliates, that is entitled to a credit under Article 8C of Chapter 105 of the General Statutes until the certified North Carolina capital company has qualified for permanent certification. A certified North Carolina capital company may make other distributions only after it has qualified for permanent certification.

(b) Maximum Interest Rate. -- A certified North Carolina capital company shall not charge interest on a senior, secured loan at an annual rate that exceeds the prime rate plus three percent (3%).

"**§ 53A-73. Tax credits.**

(a) Credit Allowed. -- A person who invests cash in a certified North Carolina capital company is entitled to a tax credit as provided in Article 8C of Chapter 105 of the General Statutes but, notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General Statutes, is not allowed a tax credit under that Division for the investment. In addition, notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General Statutes, a certified North Carolina capital company is not allowed a tax credit under that Division for its investments.

(b) Allocation of Credits. -- The Department shall allocate the total amount of credit allowed pursuant to G.S. 105-228.10E among taxpayers as provided in this section. A certified North Carolina capital company may apply for allocation of credits on behalf of its investors no earlier than the first business day after it is certified. The application shall be in the form required by the Secretary of State and shall provide all of the following:

(1) The name of each investor.
(2) The amount each investor has committed to invest in the company.
(3) Proof that the investor has committed to invest the funds subject to allocation of the applicable credits pursuant to this section.
(4) The maximum amount of credit the investment would entitle the investor to under G.S. 105-228.10C for the current taxable year and the following nine taxable years.
(5) Any other information required by the Secretary of State.

Upon receipt of a completed application, the Department shall determine the amount of available credit not yet allocated for each taxable year specified in the application. Within seven business days after receipt of the application, the Department shall allocate to the North Carolina capital company, on behalf of the investors named in the application, the total amount of credit applied for in the application, but only to the extent of available credit not yet allocated for each taxable year. The Department's allocations of credit under this section shall be in writing.

The Department shall allocate available credit to applicants in the order the applications are received. If more than one certified North Carolina capital company submits a completed application on the same day, the Department shall make the allocations to those applicants simultaneously. If the amount of credit applied for in the simultaneous applications exceeds the amount of available credit not yet allocated for a taxable year, the Department shall allocate the available credit for that taxable year among the simultaneous applicants on a pro rata basis in proportion to the amount of credit applied for by each.

"**§ 53A-74. Decertification of certified North Carolina capital company.**

(a) Grounds for Decertification. -- Any material violation of this Part shall be grounds for decertification under this section.

(b) Procedure for Decertification. -- If the Department determines that a certified North Carolina capital company is not in compliance with any requirement for continuing certification, it shall, by written notice, inform the officers of the company and the board of directors, manager, trustees, or general partners that the company will be decertified in 120 days after the date the notice is mailed unless the company corrects the deficiencies to bring itself in compliance with the requirements for certification. At the end of the 120-day grace period, if the certified North Carolina capital company is still not in compliance, the Department shall decertify the company and send a notice of decertification to the company and to the Department of Revenue and the Department of Insurance.

(c) Effect of Decertification. -- If a certified North Carolina capital company is decertified, no further tax credits for an investment in the company are allowed pursuant to G.S. 105-228.10D.

"**§ 53A-75. Rules; report.**

The Secretary of State may adopt rules to implement this Part. The Secretary of State shall report to the Legislative Research Commission by October 1 of each odd-numbered year and by February 1 of each even-numbered year the number of

certified North Carolina capital companies certified under this Part, the date each company was created, the amount and percentage of certified capital invested by each company, the amount of tax credits allocated to each company, and any other information requested by the Legislative Research Commission."

Section 3. G.S. 53A-37 reads as rewritten:

"**§ 53A-37. Definitions.**

The following definitions apply in this Article:

(1) Affiliate of a certified North Carolina capital company or insurance company. -- Any of the following:

a. A person who directly or indirectly beneficially owns (whether through rights, options, convertible interests, or otherwise), controls, or holds power to vote ten percent (10%) or more of the outstanding voting securities or other ownership interests of the company.

b. A person ten percent (10%) or more of whose outstanding voting securities or other ownership interests are, directly or indirectly, beneficially owned (whether through rights, options, convertible interests, or otherwise), controlled or held with power to vote by the company.

c. A person who directly or indirectly controls, is controlled by, or is under common control with the company.

d. A partnership in which the company is a general partner.

e. A person who is an officer, a director, or an agent of the company, or is an immediate family member of an officer, a director, or an agent of the company.

(2) Approved business venture. -- A business that satisfies all of the following conditions as of the time of a certified North Carolina capital company's first investment in the business:

a. It is headquartered in this State, it operates primarily in this State or does substantially all of its production in this State, and it employs a majority of its employees in this State.

b. It has no more than 300 employees and, during its most recent fiscal year, it had gross revenues of no more than seven million dollars ($7,000,000) on a consolidated basis as determined in accordance with generally accepted accounting principles.

c. It is not a subsidiary of another corporation.

d. It satisfies the conditions established in G.S. 105-163.013(b)(3) through (6).

(3) Approved investment. -- The investment of cash by a certified North Carolina capital company in such a manner as to acquire capital in a business that, at the time of the first investment in the business by a certified North Carolina capital company, was an approved business venture. The capital acquired may be any debt,

equity, or hybrid security, whether secured or unsecured, of any nature, including a debt instrument or security that has the characteristics of debt but provides for conversion into equity or equity participation instruments such as options or warrants.

(4) Business. -- A corporation, a partnership, an association, a limited liability company, or a sole proprietorship operated for profit.

(5) Certified capital. -- The cash invested in a certified North Carolina capital company, either in the form of equity or debt capital, during the 365-day period after the company has been initially certified as provided in Part 3 of this Article. If the certified capital is in the form of debt capital, the debt instrument issued by the certified North Carolina capital company, at par value or a premium, must have an original maturity date of at least five years after the date of issuance and a repayment schedule that is no faster than a level principal amortization.

(6) Certified North Carolina capital company. -- A partnership, corporation, trust, or limited liability company whose primary business activity is the investment of cash in approved business ventures and that is certified by the Secretary of State as provided in Part 3 of this Article.

(7) Department. -- The Department of the Secretary of State.

~~(2)~~ (8) Equity security. -- Common stock, preferred stock, an interest in a partnership, subordinated debt, or a warrant that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.

(9) Insurance company. -- Defined in G.S. 58-1-5.

~~(3)~~ (10) Mezzanine finance. -- An investment in the equity securities or subordinated debt of a Qualified North Carolina Business.

(11) Person. -- An individual, a corporation, a partnership, an association, a trust, a limited liability company, or another legal entity.

(12) Qualified distribution. -- A distribution or payment to equity owners of a certified North Carolina capital company or to their shareholders, officers, directors, partners, members, managers, employees, or affiliates, in connection with any of the following:

a. Reasonable costs and expenses of forming, syndicating, managing, and operating the company, including management fees.

b. An increase in State or federal taxes, penalties, or interest of the company's equity owners to the extent the increase relates to the ownership, management, or operation of the company.

~~(4)~~ (13) Qualified North Carolina Business. -- A business whose headquarters and principal business operations are located in

North Carolina and which, together with its affiliates on a consolidated basis, had gross income during the immediately preceding fiscal year, determined in accordance with generally accepted accounting principles without taking into account extraordinary items, of less than forty million dollars ($40,000,000).

~~(5)~~ (14) Rural areas. -- Any county in North Carolina which does not include within its boundaries a city, as defined by G.S. 160A-1(2), with a population greater than one percent (1%) of the population of North Carolina.

~~(6)~~ (15) Security. -- A security as defined in G.S. 78A-2(11).

~~(7)~~ (16) Subordinated debt. -- Indebtedness that is or will be subordinated to other indebtedness of the issuer. Subordinated debt may be convertible into common stock, preferred stock, or an interest in a partnership.

~~(8)~~ (17) Traditional ~~Financial Institutions.~~ financial institutions. -- Corporations or associations chartered under ~~Chapters~~ Chapter 53 or 54B of the General Statutes."

Section 4. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 8C.
"Premiums Tax Credit for Investments in
North Carolina Small Businesses.

"§ 105-228.10A. Purpose.

The purpose of this Article is to stimulate a substantial increase in venture capital investments in North Carolina by providing an incentive for insurance companies to invest in certified North Carolina capital companies.

"§ 105-228.10B. Definitions.

The following definitions apply in this Article:

(1) Certified capital. -- Defined in G.S. 53A-37.

(2) Certified North Carolina capital company. -- A certified North Carolina capital company created under Article 3 of Chapter 53A of the General Statutes.

"§ 105-228.10C. Premiums tax credit for investments.

(a) Credit. -- A person who invests certified capital in a certified North Carolina capital company is allowed against the gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8 a credit equal to the amount of certified capital invested by the taxpayer during the taxable year, subject to the limitations provided in this Article. To claim the credit allowed by this section, the taxpayer must provide the Secretary a copy of the certified North Carolina capital company's application for allocation of credit under G.S. 53A-73, a copy of the Secretary of State's written allocation of credit under G.S. 53A-73, and any other supporting documentation the Secretary requires.

(b) Limitations. -- The taxpayer may not take the entire credit for the taxable year the investment is made, but may take up to ten percent (10%) of the aggregate credit

allowed under this section for that taxable year and for each succeeding taxable year until the entire credit has been used. The amount of credit taken may not exceed the taxpayer's gross premiums tax liability for a taxable year reduced by the sum of all credits allowable except payments of tax by or on behalf of the taxpayer. Subject to the ten percent (10%) limitation, any unused portion of the credit may be carried forward to the five succeeding taxable years.

(c) Transfer of Credit. -- A taxpayer may transfer a credit allowed under this section to another taxpayer. The taxpayer must apply for the approval of the Commissioner of Insurance before transferring the credit. The application shall be in the form prescribed by the Commissioner. The application shall identify the proposed transferor and transferee, state the transferor's tax credit balance before and after the proposed transfer, state the amount of the credit to be transferred and the proposed date of the transfer, and include any other information the Commissioner requires regarding the proposed transfer.

The Commissioner of Insurance shall approve the proposed transfer if the application is accurate and complete and the Commissioner determines that the proposed transfer will not have an adverse effect on either taxpayer or their policyholders or shareholders. Within 60 days after receiving an application, the Commissioner shall notify the applicant that the proposed transfer has been approved or disapproved.

The Commissioner of Insurance shall maintain records and monitor all transferred credits to ensure that transfers do not result in multiple parties claiming the same credit. The Commissioner shall provide the Secretary complete records of all transferred credits.

"**§ 105-228.10D. Effect of decertification.**

If a certified North Carolina capital company is decertified under G.S. 53A-74, no tax credit or carryforward of a tax credit for an investment in the company is allowed under this Article for a taxpayer's taxable year beginning in the calendar year the decertification occurred or for subsequent taxable years. Decertification of a certified North Carolina capital company does not affect a tax credit allowed under this Article for a taxpayer's taxable year that began before the calendar year in which the decertification occurred.

"**§ 105-228.10E. Annual ceiling; cap.**

(a) Annual Ceiling. -- The total amount of tax credits that may be taken by all taxpayers under this Article in a taxable year may not exceed fifteen million dollars ($15,000,000). This amount shall be allocated among taxpayers for each taxable year as provided in G.S. 53A-73.

(b) Cap. -- The amount of credit allowed a taxpayer under this Article for a taxable year may not exceed ten percent (10%) of the annual ceiling for that year."

Section 5. G.S. 105-228.8(e) reads as rewritten:

"(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums. For purposes of this section, seventy-five percent

(75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall not be a special purpose obligation or assessment or a dedicated special purpose tax within the meaning of this subsection. The credit allowed by G.S. 105-228.10C shall not be considered in determining the amount of premium taxes imposed by this State."

Section 6. G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term 'insurance company' means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical, or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term 'insurance company' does not include a company regulated under Article 67 of this Chapter. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) The additional taxes imposed by G.S. ~~105-228.8 and the~~ 105-228.8.

(2) The additional local fire and lightning tax imposed by G.S. ~~105-228.5(d)(4) shall be disregarded.~~ 105-228.5(d)(4).

(3) The credit allowed by G.S. 105-228.10C."

Section 7. The title of Chapter 53A of the General Statutes reads as rewritten:

"Chapter 53A.

"Business Development ~~Corporations and North Carolina Capital Resource Corporations.~~ and Access to Capital."

Section 8. The title of Article 3 of Chapter 53A of the General Statutes reads as rewritten:

"ARTICLE 3.

"North Carolina Enterprise ~~Corporations.~~ Corporations and Certified North Carolina Capital Companies."

Section 9. G.S. 53A-35 and G.S. 53A-47 are repealed.

Section 10. G.S. 53A-36 reads as rewritten:

"**§ 53A-36. Legislative findings and purpose.**

(a) The General Assembly finds ~~and declares~~ that there exists in ~~the State of~~ North Carolina a serious shortage of mezzanine finance capital and credit available for investment in rural ~~areas~~ areas and other areas in the State. This shortage of mezzanine finance capital and credit is severe throughout ~~the rural areas of~~ the State, has persisted for a number of years, and constitutes a grave threat to the welfare and prosperity of all residents of the State. The lack of access to capital prevents North Carolina businesses from creating jobs that would otherwise enhance the economy of the State and provide livelihoods for North Carolina citizens.

(b) The General Assembly finds ~~and declares further~~ that private enterprise and existing federal and State governmental programs have not adequately alleviated the

severe shortage of mezzanine finance capital and credit available for investments in ~~rural areas in the~~ this State.

(c) The General Assembly finds ~~and declares~~ that it is a matter of grave public necessity that North Carolina Enterprise Corporations be authorized to be created and ~~to be~~ empowered to alleviate these severe shortages of mezzanine finance capital and credit for investment in rural areas of the State. North Carolina Enterprise Corporations shall help eliminate barriers to rural economic development by providing mezzanine finance capital and credit, and other types of financing as appropriate, to businesses in rural areas that have been unable to obtain sufficient financing through traditional financial institutions.

(d) The General Assembly finds that it is a matter of grave public necessity that certified North Carolina capital companies be authorized to be created as venture capital companies whose primary business activity is the investment of cash in small North Carolina business ventures that are in need of capital for survival, expansion, new product development, or similar purposes."

Section 11. G.S. 53A-38(a) reads as rewritten:

"(a) One or more persons, a majority of whom are residents of this State, may, by filing a certificate of incorporation as provided in subsection (b), incorporate a North Carolina Enterprise Corporation under the provisions of this ~~Article.~~ Part."

Section 12. G.S. 53A-41 reads as rewritten:

"**§ 53A-41. Governing law.**

Except as otherwise provided in this ~~Article,~~ Part, a North Carolina Enterprise Corporation shall be governed by Chapter 55 of the General Statutes."

Section 13. G.S. 53A-42 reads as rewritten:

"**§ 53A-42. Powers.**

A North Carolina Enterprise Corporation created under this ~~Article~~ Part shall have all the powers conferred on business corporations by Chapter 55 of the General Statutes."

Section 14. Sections 4, 5, and 6 of this act and G.S. 53A-73, as enacted by Section 2 of this act, become effective for taxable years beginning on or after January 1, 1997, and apply to investments made on or after that date. The remainder of this act is effective when this act becomes law. An application for initial certification as a North Carolina capital company pursuant to G.S. 53A-71 may not be submitted until the first Monday that falls at least 45 days after this act becomes law. G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as enacted by this act, are repealed effective for investments made on or after January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 956*
Proposed Finance Committee Substitute S956-CSLC-7/22
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Venture Capital Investment Incentive. (Public)

Sponsors: Senators

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE CAPITAL INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN INSURANCE PREMIUMS TAX CREDIT FOR THESE INVESTMENTS.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the Venture Capital Investment Incentive Act of 1997.

Section 2. G.S. 53A-35 through G.S. 53A-37 are designated Part 1 of Article 3 of Chapter 53A of the General Statutes, entitled "General Provisions" and the remainder of Article 3 of Chapter 53A of the General Statutes is designated Part 2, entitled "North Carolina Enterprise Corporations".

Section 3. Article 3 of Chapter 53A of the General Statutes, as amended by this act, is further amended by adding a new Part to read:

"Part 3. Certified North Carolina Capital Companies.

"§ 53A-70. Requirements for certification of a certified North Carolina capital company.

(a) Initial Certification. -- In order to be initially certified as a certified North Carolina capital company, a company must satisfy the following requirements:

(1) It is a partnership, corporation, trust, or limited liability company, whether for-profit or nonprofit, whose primary business activity is the investment of cash in approved business ventures.

(2) Its cash, marketable securities, and other liquid assets equal at least five hundred thousand dollars ($500,000).

(3) Its officers and its board of directors, partners, trustees, or managers have certified that they have a copy of the Venture Capital Investment Incentive Act of 1997 and any applicable rules.

(4) No insurance company or affiliate of an insurance company is a managing general partner of the certified North Carolina capital company or controls the direction of investments of the certified North Carolina capital company. This subdivision does not preclude an insurance company or any other party from exercising its legal rights and remedies, which may include interim management of a certified North Carolina capital company, in the event that a certified North Carolina capital company is in default of its statutory obligations or its contractual obligations to the insurance company or other party.

(5) It agrees that, because the tax credits provided by law are considered an investment by the State of North Carolina, it will pay to the State an investment return calculated as provided in G.S. 53A-75. In addition, it agrees that its contracts with investors will provide for the company's payment of this investment return to the State.

(b) Continuing Certification. -- To remain certified as a certified North Carolina capital company, the company must satisfy the following requirements:

(1) Within two years after the date it was initially certified, at least twenty-five percent (25%) of the certified capital invested in the company must be placed in approved investments.

(2) Within three years after the date it was initially certified, at least forty percent (40%) of the certified capital invested in the company must be placed in approved investments.

(3) Within four years after the date it was initially certified, at least fifty percent (50%) of the

certified capital invested in the company must be placed in approved investments.

(4) It shall not invest in a single approved business venture an amount that is more than fifteen percent (15%) of the total certified capital under the company's management at the time of the investment.

(5) No insurance company or affiliate of an insurance company is a managing general partner of the certified North Carolina capital company or controls the direction of investments of the certified North Carolina capital company. This subdivision does not preclude an insurance company or any other party from exercising its legal rights and remedies, which may include interim management of a certified North Carolina capital company, in the event that a certified North Carolina capital company is in default of its statutory obligations or its contractual obligations to the insurance company or other party.

(c) Permanent Certification. -- A certified North Carolina capital company that has satisfied the requirements of G.S. 53A-70(b) and has invested all of its certified capital in approved investments, as demonstrated by its most recent financial statement and report filed in accordance with G.S. 53A-71, qualifies for permanent certification and is no longer required to obtain continuing certification as required in G.S. 53A-71. A certified North Carolina capital company that has qualified for permanent certification must continue to submit annual financial statements and reports under G.S. 53A-71 for three years after it qualifies for permanent certification.

"§ 53A-71. Procedure for initial and continuing certification; reports.

(a) Initial Certification. -- In order to be initially certified as a certified North Carolina capital company, a company must file an application with the Department and pay the initial certification fee. The application shall include any information and supporting documents required by the Secretary of State to determine whether the company qualifies for initial certification. Within 60 days after an application is filed, the Department shall determine whether the applicant qualifies for initial certification and shall either issue the certification or shall refuse the certification and notify the applicant in detail of the grounds for the refusal, including suggestions for the removal of those grounds.

The Department shall review and approve or reject applications in the order submitted. If more than one application is received by the Department on the same day, all applications received on that day shall be reviewed and approved simultaneously, except in the case of incomplete applications or applications for which additional information is requested by the Department and is not supplied by the applicant within 15 days after the request by the Department. If more than one applicant is certified on the same day, the Department shall ensure that all applicants certified on that day are notified of certification at the same time.

(b) Continuing Certification. -- A certified North Carolina capital company that has not qualified for permanent certification must, in order to remain certified, submit an annual application for continued certification and pay the annual review fee by July 1 of each year. The request shall include any information and supporting documents required by the Secretary of State to determine whether the company qualifies for continued certification. The request shall also include copies of the certified North Carolina capital company's applications for allocation of credit under G.S. 105-228.10E and of the Secretary's written allocation of credit to the company under G.S. 105-228.10E.

The Department shall conduct an annual review of each certified North Carolina capital company that has not qualified for permanent certification to determine if the company is in compliance with the requirements for initial and continuing certification and to ensure that the company's investments are in compliance with this Part. The review shall be based upon the company's financial statements and other information submitted in accordance with this section.

(c) Application Forms; Fees. -- Applications for initial and continuing certification under this section shall be in the form required by the Secretary of State. The Secretary of State shall prepare blank forms for the applications. Each application shall be signed by the owners, a manager, or an executive officer of the company. There shall be annexed to the application the affirmation of the person making the application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.' A person who submits a false application is guilty of a Class 1 misdemeanor.

The Secretary of State shall charge an applicant a fee of five thousand dollars ($5,000) for initial certification as a certified North Carolina capital company, a fee of five thousand

dollars ($5,000) for annual review for continuing certification as a certified North Carolina capital company, and a fee of five thousand dollars ($5,000) for issuing a certificate of permanent certification. The Secretary of State shall credit forty percent (40%) of each fee to the Department of Revenue and shall retain the balance. Fees collected under this section shall be applied to the cost of administering this Part and Article 8C of Chapter 105 of the General Statutes.

(d) Periodic Reports Before Permanent Certification. -- Each certified North Carolina capital company shall provide the Department the following reports and updates on the due dates specified by the Department. The reports and updates shall be in the form prescribed by the Secretary of State and shall include any information required by the Secretary of State about the company and about the approved business ventures in which it has invested.

(1) Annual Audit. -- An annual audited financial statement and report that includes an opinion of an independent certified public accountant approved by the Secretary of State. The audit shall address the methods of operation and conduct of the business of the company to determine whether the company has complied with this Part and whether the cash invested in the company has been invested as required by this Part. The audit shall also determine whether each business in which the company has invested is an approved business venture as defined in this Article.

(2) Annual Audit of Cumulative Distributions. -- An audited report of the company's cumulative, nonqualified distributions that includes an opinion of an independent certified public accountant approved by the Secretary of State. The audit shall detail the company's cumulative distributions, other than qualified distributions, to equity holders and debt holders, as compared to the amount of the company's original certified capital and any additional capital contributions to the company. The audit shall determine what annual internal rate of return these cumulative nonqualified distributions, when combined with all tax credits allocated to debt holders and equity holders pursuant to G.S. 105-228.10E, have resulted in, when computed on the amount of the company's

original certified capital and any additional capital contributions to the company. The audit shall then compute an amount equal to twenty-five percent (25%) of the amount of these cumulative nonqualified distributions in excess of the amount, combined with the allocated tax credits, required to produce an annual internal rate of return of fifteen percent (15%) and compare that amount with the total amount of investment return the company has paid to the State pursuant to G.S. 35A-75.

(3) Midyear Update. -- A midyear, unaudited update of the certified North Carolina capital company's annual financial statement and report described in subdivision (1) of this subsection.

(e) Periodic Reports After Permanent certification. -- A certified North Carolina capital company that has qualified for permanent certification is no longer required to submit midyear updates but shall continue to submit, for informational purposes only, the annual financial statement and report described in subdivision (d)(1) of this section on the due dates specified by the Department for three years after the company qualifies for permanent certification. In addition, the company shall continue to submit the annual cumulative distributions audit described in subdivision (d)(2) of this section until it has made final distributions to its investors and will not be making any future distributions other than qualified distributions. Thereafter, no additional financial statements and reports are required under this subsection.

"**§ 53A-72. Distributions; maximum interest rate.**

(a) Distributions. -- A certified North Carolina capital company may make qualified distributions at any time. A certified North Carolina capital company may, without restriction, make distributions and payments to debt holders with respect to debt owed them by the company, but no distributions or payments may be made to an equity holder, or any of its affiliates, that is entitled to a credit under Article 8C of Chapter 105 of the General Statutes until the certified North Carolina capital company has qualified for permanent certification. A certified North Carolina capital company may make other distributions only after it has qualified for permanent certification.

(b) Maximum Interest Rate. -- A certified North Carolina capital company shall not charge interest on a senior, secured

loan at an annual rate that exceeds the prime rate plus three percent (3%).

"§ 53A-73. Tax credits.

A person who invests cash in a certified North Carolina capital company is entitled to a tax credit as provided in Article 8C of Chapter 105 of the General Statutes but, notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General Statutes, is not allowed a tax credit under that Division for the investment. In addition, notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General Statutes, a certified North Carolina capital company is not allowed a tax credit under that Division for its investments.

"§ 53A-74. Decertification of certified North Carolina capital company.

(a) Grounds for Decertification. -- Any material violation of this Part not cured pursuant to subsection (b) of this section shall be grounds for decertification under this section of a certified North Carolina capital company that has not qualified for permanent certification.

(b) Procedure for Decertification. -- If the Department determines that a certified North Carolina capital company is not in compliance with any requirement for continuing certification, it shall, by written notice, inform the officers of the company and the board of directors, manager, trustees, or general partners that the company will be decertified in 120 days after the date the notice is mailed unless the company corrects the deficiencies to bring itself in compliance with the requirements for certification. If the deficiencies are corrected so as to bring the certified North Carolina capital company into compliance within the 120-day grace period, then the violation of this Part shall be considered not to have occurred. At the end of the 120-day grace period, if the certified North Carolina capital company is still not in compliance, the Department shall decertify the company and send a notice of decertification to the company and to the Department of Revenue and the Department of Insurance.

(c) Effect of Decertification. -- If a certified North Carolina capital company is decertified, no further tax credits or carryforwards of credits for an investment in the company are allowed as provided in G.S. 105-228.10D. In addition, if a certified North Carolina capital company is decertified before it has met all the requirements of G.S. 53A-70(b)(1) through (3), all tax credits for investment in the company are forfeited as provided in G.S. 105-228.10D.

"§ 53A-75. Investment return to State.

(a) The tax credits provided in Article 8C of Chapter 105 of the General Statutes are an investment by the State of North Carolina in each certified North Carolina capital company. Each certified North Carolina capital company, as part of its initial certification, has agreed to pay the State a return on its investment. Each year, every certified North Carolina capital company shall determine from its annual audit of cumulative distributions filed pursuant to G.S. 53A-71(d)(2), an amount equal to twenty-five percent (25%) of its cumulative nonqualified distributions that exceed the amount of distributions, combined with all tax credits allocated to debt holders and equity holders, required to produce an annual internal rate of return of fifteen percent (15%). Within 30 days after filing its annual audit of cumulative distributions, the company shall pay the Department of Revenue the excess of this amount over the total cumulative amount it has paid under this section in past years. If a company's annual audit demonstrates that the annual internal rate of return of the company's cumulative nonqualified distributions, combined with all tax credits allocated to debt holders and equity holders, does not exceed fifteen percent (15%), the company is not required to make a payment under this section for that year.

(b) A company that fails to make a payment required by this section is subject to the penalties and remedies provided in Article 9 of Chapter 105 of the General Statutes to the same extent as if the required payment were a tax. The Department of Revenue shall credit payments made under this section to the General Fund as nontax revenue.

"§ 53A-76. Rules; report.

The Secretary of State may adopt rules to implement this Part. The Secretary of State shall report to the Legislative Research Commission by October 1 of each year the number of certified North Carolina capital companies certified under this Part, the date each company was created, the amount and percentage of certified capital invested by each company, the amount of tax credits allocated to each company, and any other information requested by the Legislative Research Commission."

Section 4. G.S. 53A-37 reads as rewritten:

"§ 53A-37. Definitions.

The following definitions apply in this Article:

(1) Affiliate of a company. -- Any of the following:

a. A person who directly or indirectly beneficially owns (whether through rights,

options, convertible interests, or otherwise), controls, or holds power to vote ten percent (10%) or more of the outstanding voting securities or other ownership interests of the company.

b. A person ten percent (10%) or more of whose outstanding voting securities or other ownership interests are, directly or indirectly, beneficially owned (whether through rights, options, convertible interests, or otherwise), controlled, or held with power to vote by the company.

c. A person who directly or indirectly controls, is controlled by, or is under common control with the company on account of common ownership, common directors, or common management.

d. A partnership in which the company is a general partner.

e. A person who is an officer, a director, or a management employee of the company, or is a close family member of an officer, a director, or a management employee of the company. For the purpose of this requirement, a close family member is a spouse, parent, child, sibling, parent-in-law, sibling-in-law, son-in-law, or daughter-in-law.

(2) Approved business venture. -- A business that satisfies all of the following conditions as of the time of a certified North Carolina capital company's first investment in the business:

a. It has its principal business office in this State, it does a majority of its production in this State, and it employs a majority of its employees in this State.

b. It has no more than 300 employees and, during its most recent fiscal year, it had gross revenues of no more than seven million dollars ($7,000,000) on a consolidated basis as determined in accordance with generally accepted accounting principles.

c. It is not a majority-owned subsidiary of another corporation.

d. It satisfies the conditions established in G.S. 105-163.013(b)(3) through (6).

e. Its authorized representative has given the certified North Carolina company investing in it a sworn affidavit certifying that a majority of the proceeds of the investment will be used for operations or capital improvements in North Carolina.

(3) Approved investment. -- The investment of cash by a certified North Carolina capital company in such a manner as to acquire capital in a business that, at the time of the first investment in the business by a certified North Carolina capital company, was an approved business venture. The capital acquired may be any debt, equity, or hybrid security, whether secured or unsecured, of any nature, including a debt instrument or security that has the characteristics of debt but provides for conversion into equity or equity participation instruments such as options or warrants.

(4) Business. -- A corporation, a partnership, a association, a limited liability company, or a sole proprietorship operated for profit.

(5) Certified capital. -- The cash invested in a certified North Carolina capital company, either in the form of equity or debt capital, during the 365-day period after the company has been initially certified as provided in Part 3 of this Article. If the certified capital is in the form of debt capital, the debt instrument issued by the certified North Carolina capital company, at par value or a premium, must have an original maturity date of at least five years after the date of issuance and a repayment schedule that is no faster than a level principal amortization.

(6) Certified North Carolina capital company. -- A partnership, corporation, trust, or limited liability company whose primary business activity is the investment of cash in approved business ventures and that is certified by the Secretary of State as provided in Part 3 of this Article.

(7) Department. -- The Department of the Secretary of State.

~~(2)~~ (8) Equity security. -- Common stock, preferred stock, an interest in a partnership, subordinated debt, or a warrant that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.

(9) Insurance company. -- Defined in G.S. 58-1-5.

~~(3)~~ (10) Mezzanine finance. -- An investment in the equity securities or subordinated debt of a Qualified North Carolina Business.

(11) Person. -- An individual, a corporation, a partnership, an association, a trust, a limited liability company, or another legal entity.

(12) Qualified distribution. -- A distribution or payment to equity owners of a certified North Carolina capital company or to their shareholders, officers, directors, partners, members, managers, employees, or affiliates, in connection with any of the following:

a. Reasonable costs and expenses of forming, syndicating, managing, and operating the company, including management fees.

b. An increase in State or federal taxes, penalties, or interest of the company's equity owners to the extent the increase relates to the ownership, management, or operation of the company.

~~(4)~~ (13) Qualified North Carolina Business. -- A business whose headquarters and principal business operations are located in North Carolina and which, together with its affiliates on a consolidated basis, had gross income during the immediately preceding fiscal year, determined in accordance with generally accepted accounting principles without taking into account extraordinary items, of less than forty million dollars ($40,000,000).

~~(5)~~ (14) Rural areas. -- Any county in North Carolina which does not include within its boundaries a city, as defined by G.S. 160A-1(2), with a population greater than one percent (1%) of the population of North Carolina.

~~(6)~~ (15) Security. -- A security as defined in G.S. 78A-2(11).

~~(7)~~ (16) Subordinated debt. -- Indebtedness that is or will be subordinated to other indebtedness of the

issuer. Subordinated debt may be convertible into common stock, preferred stock, or an interest in a partnership.

~~(8)~~ (17) Traditional ~~Financial Institutions.~~ financial institutions. -- Corporations or associations chartered under ~~Chapters~~ Chapter 53 or 54B of the General Statutes."

Section 5. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 8C.

"Premiums Tax Credit for Investments in North Carolina Small Businesses.

"**§ 105-228.10A. Purpose.**

The purpose of this Article is to stimulate a substantial increase in venture capital investments in North Carolina by providing an incentive for insurance companies to invest in certified North Carolina capital companies.

"**§ 105-228.10B. Definitions.**

The following definitions apply in this Article:

(1) Certified capital. -- Defined in G.S. 53A-37.

(2) Certified North Carolina capital company. -- A certified North Carolina capital company created under Article 3 of Chapter 53A of the General Statutes.

"**§ 105-228.10C. Premiums tax credit for investments.**

(a) Credit. -- A person who invests certified capital in one or more certified North Carolina capital companies is allowed against the gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8 a credit equal to the amount of certified capital invested by the taxpayer during the taxable year, subject to the limitations provided in this Article. To claim the credit allowed by this section, the taxpayer must provide the Secretary a copy of each certified North Carolina capital company's application for allocations of credit under G.S. 105-228.10E, a copy of the Secretary's written allocation of credit under G.S. 105-228.10E, and any other supporting documentation the Secretary requires.

(b) Limitations. -- The taxpayer may not take the entire credit for the taxable year the investment is made, but may take up to ten percent (10%) of the aggregate credit allowed under this section for that taxable year and for each succeeding taxable year until the entire credit has been used. The amount of credit taken may not exceed the taxpayer's gross premiums tax liability for a taxable year reduced by the sum of all credits

allowable except payments of tax by or on behalf of the taxpayer. Subject to the ten percent (10%) limitation, to the extent a taxpayer does not use all of the credit it is entitled to take in any year, the unused portion of that year's credit may be carried forward to the five succeeding taxable years.

"**§ 105-228.10D. Effect of decertification.**

If a certified North Carolina capital company is decertified under G.S. 53A-74, no tax credit or carryforward of a tax credit for an investment in the company is allowed under this Article for a taxpayer's taxable year beginning in the calendar year the decertification occurred or for subsequent taxable years. Decertification of a certified North Carolina capital company after it has met all the requirements of G.S. 53A-70(b)(1) through (3) does not affect a tax credit allowed under this Article for a taxpayer's taxable year that began before the calendar year in which the decertification occurred. If a certified North Carolina capital company is decertified before it has met all the requirements of G.S. 53A-70(b)(1) through (3), all tax credits previously allowed to taxpayers for investment in the company are forfeited. A taxpayer who forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the company is decertified; a taxpayer who fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-228.10E. Cap; annual ceiling.**

(a) Cap. -- The amount of credit allowed a taxpayer under this Article for a taxable year may not exceed ten percent (10%) of the annual ceiling for that year.

(b) Annual Ceiling. -- The total amount of tax credits that may be taken by all taxpayers under this Article in a taxable year may not exceed fifteen million dollars ($15,000,000). The Department of Revenue shall allocate this amount among taxpayers as provided in this subsection. A certified North Carolina capital company may apply for allocation of credits on behalf of its investors no earlier than the first business day after it is certified. The application shall be in the form required by the Secretary and shall provide all of the following:

(1) The name of each investor.

(2) The amount each investor has committed to invest in the company.

(3) Proof that the investor has committed to invest the funds subject to allocation of the applicable credits pursuant to this section.

(4) The maximum amount of credit the investment would entitle the investor to under this Article for the current taxable year and the following nine taxable years.

(5) Any other information required by the Secretary.

Upon receipt of a completed application, the Department shall determine the amount of available credit not yet allocated for each taxable year specified in the application. Within 20 business days after receipt of the application, the Department shall allocate to the North Carolina capital company, on behalf of the investors named in the application, the total amount of credit applied for in the application, but only to the extent of available credit not yet allocated for each taxable year. The Department's allocations of credit under this subsection shall be in writing.

The Department shall allocate available credit to applicants in the order the applications are received. If more than one certified North Carolina capital company submits a completed application on the same day, the Department shall make the allocations to those applicants simultaneously. If the amount of credit applied for in the simultaneous applications exceeds the amount of available credit not yet allocated for a taxable year, the Department shall allocate the available credit for that taxable year among the simultaneous applicants on a pro rata basis in proportion to the amount of credit applied for by each."

Section 6. G.S. 105-228.8(e) reads as rewritten:

"(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums. For purposes of this section, seventy-five percent (75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall not be a special purpose obligation or assessment or a dedicated special purpose tax within the meaning of this subsection. The credit allowed by G.S. 105-228.10C shall not be considered in determining the amount of premium taxes imposed by this State."

Section 7. G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term 'insurance company' means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical, or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term 'insurance company' does not include a company regulated under Article 67 of this Chapter. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) The additional taxes imposed by G.S. ~~105-228.8 and the~~ 105-228.8.

(2) The additional local fire and lightning tax imposed by G.S. ~~105-228.5(d)(4) shall be disregarded.~~ 105-228.5(d)(4).

(3) The credit allowed by G.S. 105-228.10C."

Section 8. The title of Chapter 53A of the General Statutes reads as rewritten:

"Chapter 53A.

"Business Development ~~Corporations and North Carolina Capital Resource Corporations.~~ and Access to Capital."

Section 9. The title of Article 3 of Chapter 53A of the General Statutes reads as rewritten:

"ARTICLE 3.

"North Carolina Enterprise ~~Corporations.~~ Corporations and Certified North Carolina Capital Companies."

Section 10. G.S. 53A-35 and G.S. 53A-47 are repealed.

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(a) The General Assembly finds ~~and declares~~ that there exists in ~~the State of~~ North Carolina a serious shortage of mezzanine finance capital and credit available for investment in rural ~~areas~~ areas and other areas in the State. This shortage of mezzanine finance capital and credit is severe throughout ~~the rural areas of~~ the State, has persisted for a number of years, and constitutes a grave threat to the welfare and prosperity of all residents of the State. The lack of access to capital prevents North Carolina businesses from creating jobs that would otherwise enhance the economy of the State and provide livelihoods for North Carolina citizens.

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(c) The General Assembly finds ~~and declares~~ that it is a matter of grave public necessity that North Carolina Enterprise Corporations be authorized to be created and ~~to be~~ empowered to alleviate these severe shortages of mezzanine finance capital and credit for investment in rural areas of the State. North Carolina Enterprise Corporations shall help eliminate barriers to rural economic development by providing mezzanine finance capital and credit, and other types of financing as appropriate, to businesses in rural areas that have been unable to obtain sufficient financing through traditional financial institutions.

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"**§ 53A-42. Powers.**

A North Carolina Enterprise Corporation created under this ~~Article~~ Part shall have all the powers conferred on business corporations by Chapter 55 of the General Statutes."

Section 15. Sections 5, 6, and 7 of this act and G.S. 53A-73, as enacted by Section 3 of this act, become effective for taxable years beginning on or after January 1, 1999, and apply to investments made on or after that date. The remainder of this act is effective when this act becomes law. An application for initial certification as a North Carolina capital company

pursuant to G.S. 53A-71 may not be submitted until the first Monday that falls at least 45 days after this act becomes law. G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as enacted by this act, are repealed effective for investments made on or after January 1, 2001. If any provision of this act or its application is held invalid, then G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as enacted by this act, are repealed effective for investments made on or after the date of the holding of invalidity.

EXPLANATION OF SENATE BILL 956 (PCS):
Venture Capital Investment Incentive

TO: Senate Finance Committee
FROM: Committee Staff
DATE: July 22, 1997
SPONSOR: Senator Hoyle

Senate Bill 956 seeks to provide start-up and expansion capital to small businesses by giving private insurance companies that make certain venture capital investments a dollar for dollar tax credit to be applied against the insurance premiums tax owed by these companies. The tax credit is effective for taxable years beginning on or after January 1, 1999, and applies to investments made on or after that date, and it expires for investments made on or after January 1, 2001.

Under the bill, an insurance company invests in a certified North Carolina capital company (CAPCO), which in turn provides capital to approved North Carolina business ventures. The insurance company is entitled to a tax credit of 100% of the cash it invests in a CAPCO during the 365-day period after the company has been initially certified. The credit may be taken at the rate of up to 10% per year until the entire credit is used, subject to an annual maximum credit amount of $1,500,000. Any unused installment of the credit may be carried forward for five years, subject to the 10% limit. If a CAPCO is decertified, the insurance company is not permitted to take any unused tax credits or carryforwards. If the CAPCO is decertified before it has met the requirement that it invest 50% of its certified capital within four years in approved investments, the taxpayer also forfeits all tax credits and carryforwards previously taken and must repay all back taxes avoided because of the credit, with interest.

The total amount of credit that may be taken by all taxpayers in any one taxable year is $15,000,000. The credit is allocated to taxpayers on a "first come, first served" basis. The CAPCO must apply to the Department of Revenue for the allocation of credits on behalf of its investors. Upon receipt of the application, the Department will determine the amount of available credit not yet allocated for each taxable year specified in the application. The Department must allocate to the CAPCO, on behalf of its investors, the total amount of credit applied for in the application to the extent of the available credit not yet allocated for each taxable year. To claim the credit, the taxpayer must provide the Secretary of Revenue with a copy of the CAPCO's application for allocation of credit, a copy of the Secretary of Revenue's written allocation of credit, and any other supporting documentation the Secretary may require. The original bill required the Secretary of State to make the allocation; the proposed committee substitute shifts that responsibility to the Department of Revenue. The Department of Revenue has stated that it will have recurring costs of $22,325 and nonrecurring costs of $3,200 in taking on this responsibility.

The allocation of the credit appears to violate the uniformity provisions of the North Carolina Constitution. The General Assembly has the authority to create classifications for

taxation, but the class must be reasonable and based on a rational difference of situation and condition. In other words, there must be a rational basis reasonably related to the purpose of the legislation to justify the decision to exclude some parties from the application of the law. Under the allocation method proposed by this bill, a taxpayer who made an investment and applied for allocation of the credit early in the taxable year would be allowed a tax credit and an identical taxpayer who applied for allocation later in the year would not. If this "first come, first served" allocation were held unconstitutional, the bill has a nonseverability clause stating that the tax credit is repealed for investments made on or after that date. For the tax years challenged, however, the State would probably be liable for refunds for those who paid under protest. Other tax credits in existing law provide a cap by allocating the credits on a pro rata basis after all identical applicants have applied for credit, which does not violate the constitution.

An insurance company must invest cash, either in the form of equity or debt capital, in a certified North Carolina capital company to be eligible for the credit allowed by this bill. Traditional private sector venture capital financing involves risks greater than those inherent in other investments. Under this bill, the State assumes this increased risk on behalf of the insurance company by providing tax credits equal to the amount of the investment, thus essentially reimbursing the company for its investment. The proposed committee substitute provides the State a potential return on its investment. Under proposed G.S. 53A-75, a CAPCO would pay the State 25% of the excess of its cumulative distributions that exceed the amount that, when combined with all tax credits allocated, would produce an annual internal rate of return of 15%. The calculation would be made as part of the CAPCO's annual audit and payment to the Department of Revenue would be due within 30 days after the audit. The payments would be credited to the General Fund as nontax revenue.

To be initially certified by the Secretary of State, a capital company must have at least $500,000 of liquid assets which it would invest in approved business ventures. An approved business venture is a business that meets all of the following conditions:

1. It is headquartered in this State, does a majority of its production in this State, and employs a majority of its employees in this State.
2. It employs no more than 300 employees.
3. It has gross revenues of no more than $7,000,000 a year.
4. It is not a majority-owned subsidiary of another company.
5. It is engaged primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service related industry.
6. It does not engage in providing professional services, construction or contracting, selling or leasing at retail, purchase or sale of commercial paper or real estate, personal grooming or cosmetic services, entertainment, athletic or recreation services for a fee.
7. It is not formed for the purpose of acquiring the stock or assets of another business.
8. It is not a real estate related business.

9. Its authorized representative has provided a sworn affidavit that a majority of the proceeds of the CAPCO's investment in it will be used for operations or capital improvements in North Carolina.

For a CAPCO's certification to be renewed, it must invest 25% of the capital invested in it in approved business ventures within two years, 40% within three years, and 50% within five years. The company is also limited to investing no more than 15% of its capital in any one business. Once a CAPCO has invested 100% of the capital invested in it in approved business ventures, it qualifies for permanent certification. It may then distribute investment returns to investors and is no longer required to obtain continuing certification. The company must continue to file annual financial statements and reports for three years after it qualifies for permanent certification. The initial certification, annual review, and permanent certification are handled by the Secretary of State's office for a fee of $5,000 each, which will be distributed 40% to the Department of Revenue and 60% to the Secretary of State. The Secretary of State is to report to the Legislative Research Commission annually on the amount of the credit taken and the number of taxpayers taking the credit.

The credit allowed by this bill for insurance companies is similar to the income tax credit currently allowed to individuals and small partnerships for investing directly in qualified businesses. Prior to January 1, 1997, the definition of a qualified business was very similar to an approved business venture. The General Assembly expanded the credit to include businesses outside of North Carolina because the credit violated the Commerce Clause of the Constitution when it was limited to investments in North Carolina businesses. Although the credit allowed by this bill is limited to indirect investments in North Carolina businesses and thus discriminates against out-of-state businesses, the Attorney General's office believes that the credit would not be held unconstitutional if challenged because this credit applies only to insurance companies. Congress, through the McCarran-Ferguson Act, has removed all Commerce Clause limitations on the authority of the states to regulate and tax the business of insurance. Committee staff has found no case law on point with the tax credit proposed by this bill. Most of the cases surrounding the McCarran-Ferguson Act concern the differing tax treatment between in-state and out-of-state insurance companies. The Supreme Court has consistently held that a state may discriminate in its tax treatment of insurance companies because of the McCarran-Ferguson Act. The courts have not addressed whether this discrimination may be extended beyond insurance companies to the business ventures in which they invest without a violation of the Commerce Clause. If the bill were invalidated under the Commerce Clause, the bill has a nonseverability clause stating that the tax credit is repealed for investments made on or after that date. For the tax years challenged, however, the State would probably be liable for refunds for those who paid under protest.

SOUTHEAST INTERACTIVE
TECHNOLOGY FUNDS

July 1, 1997

The Honorable Mike Wilkins
Legislative Office Building
Raleigh, NC 27601

Dear Representative Wilkins:

I understand that you are sponsoring legislation to encourage the formation of more early stage venture capital in North Carolina. We are generally supportive of any efforts to provide more early stage capital for North Carolina entrepreneurs.

While there are many qualified early stage venture capital investing opportunities in our North Carolina, only a small subset of these transactions are actually funded because of the lack of adequate capital sources. Providing more North Carolina sources of early stage capital to these companies is critical to their success. These promising young companies can be tremendous engines of job growth as they provide high wage employment opportunities.

If we can provide further information about the need for early stage venture capital in our state, please do not hesitate to contact us. You are to be commended for your efforts in helping make capital more readily available for North Carolina entrepreneurs.

Best wishes.

Sincerely,

SOUTHEAST INTERACTIVE
TECHNOLOGY FUNDS

David C. Blivin, CPA
Managing Director

DCB:0780kt

2525 Meridian Parkway, Suite 300-A
Durham, North Carolina 27713
(919) 558-TECH (8324)
facsimile (919) 558-2025

June 30, 1997

Mr. Samuel H. Poole
Attorney at Law
The Sanford Holshauser Law Firm, PLLC
234 Fayetteville Street Mall, Suite 100
P.O. Box 2447
Raleigh, N.C. 27602

Dear Sam:

I appreciate the opportunity to express some thoughts about North Carolina's support of entrepreneurs. After having obtained my MBA from Duke University's Fuqua School of Business in 1981 and having worked at Duke Medical Center for nearly seven years as Director of Development and Administrative Manager of the Duke Comprehensive Cancer Center, I decided to become an entrepreneur.

In 1982 Eugene Stead, Jr., MD and I co-invented a no-fault malpractice insurance program and partnered with an insurance company in Georgia. There was virtually no venture money in North Carolina at that time, so our sole source of capital was from our partner. Our company was vastly under-funded and while policies were approved in North Carolina, Florida and Massachusetts, it eventually failed because we did not have the financial resources and independence to pursue paths that we felt would have given us a good chance of success.

In 1986 a partner and I started Johnston, Zabor & Associates, Inc., a marketing research firm that developed innovative technologies. We attempted to raise venture capital, but were unsuccessful identifying any North Carolina funds. We were able to obtain $250,000 in "angel money," which allowed us to survive during some lean times. We are now a firm with over 60 employees and a firm that is nationally recognized. The technology we developed in 1989 still exists, but never realized its potential, we think largely because we never had the resources to completely develop or market it nationally.

In 1995 I began developing a revolutionary approach toward using The Internet, Intranets and CD ROM interactive multi-media to help consumers make complex decisions on benefit selection. Our first products are called PlanSmartChoice™ Decision Tools. We have obtained more than $800,000 from two Small Business Innovative Research (SBIR) contracts with the federal government and more than $250,000 from one corporate sponsor in North Carolina.

We now have products, almost fully designed, that reviewers nationally have told us are the most sophisticated decision support for consumers and employees they have ever seen. Organizations with far greater resources have not been able to design tools that are as intuitive and easy to use, while helping people make very complex decisions on health care and other benefits.

We have been attempting to raise $1.5 to $2 million dollars in first round funding for nearly a year. We are nearly finished with the product design phase and are now moving into the marketing phase. We have an opportunity to be the nation's leader in consumer decision support systems, but without capital our products will languish. Timing is critical.

DECISION INNOVATIONS, INC.

P.O. Box 14255, Research Triangle Park, North Carolina 27709

(919) 361-0970 • fax (919) 544-0954 • DecisionInnovation@MSN.COM

Venture capital firms in North Carolina are so small that they do not have the capital resources to take much risk or to hire sophisticated staff members to work with start-up companies in a "seed" deal. It does appear we will raise $750,000 to $1 million this year from North Carolina VCs and angels, but it has been a laborious task.

Venture capital firms I have dealt with in Boston, Washington, New York and California all have $200 million, $600 million or $4 billion dollars under management. Getting them to invest in North Carolina start-ups is a real challenge. Most out-of-state VC's want a local "seed" partner, but the venture capital firms in North Carolina are often considered under-funded and insignificant as meaningful partners.

I have had one venture capital firm in Boston tell me that we would be easily funded if we moved to Boston. Similar comments have been made by firms in Washington, DC and in Silicon Valley, California. We love North Carolina and believe this area is a melting pot for technology. What it lacks is capital resources.

Decision Innovations has the potential to be a $100,000,000 company, employing 1,000 or more people, but without the resources we may have to move out-of-state or risk failure.

North Carolina must recognize that entrepreneurial enterprises, not just large business, offer a rich future of employment, taxes and quality of life for North Carolinians. This potential will only be realized if there is adequate capital in the region to support companies like mine.

It is my sincere hope that initiatives, currently being considered by The State Legislature, to channel significant funding to North Carolina venture investments, would be realized. While investing in start-up ventures in North Carolina might be considered riskier than investing in blue chip stocks and bonds, the potential to invigorate the North Carolina economy long into the future far out-weighs the risk.

I am sure there are many more examples like mine where funding from sources of venture capital could have made a significant difference.

Please feel free to share this letter with whomever you please. I am happy to have had the opportunity to express my feelings and beliefs about the need for greater support.

Thank you.

Sincerely,

Jeffrey M. Johnston
President & CEO

North Carolina
Small Business and Technology
Development Center

333 Fayetteville Street Mall, Suite 1150
Raleigh, NC 27601-1742

919/715-7272
800/258-0862 (in NC only)
FAX: 919/715-7777

June 25, 1997

Sponsoring Institutions and Offices

Appalachian State University
Boone, 704/262-2492
Hickory, 704/345-1110

East Carolina University
Greenville, 919/328-6157

Elizabeth City State University
North Carolina Wesleyan College
Elizabeth City, 919/335-3247

Fayetteville State University
University of North Carolina at Pembroke
Campbell University
Methodist College
St. Andrews Presbyterian College
Fayetteville, 910/486-1727
Pembroke, 910/521-6603

North Carolina A&T State University
University of North Carolina at Greensboro
sboro, 910/334-7005

versity of North Carolina at Chapel Hill
North Carolina Central University
Chapel Hill, 919/962-0389
Raleigh, 919/715-0520

University of North Carolina at Charlotte
Charlotte, 704/548-1090

University of North Carolina at Wilmington
Wilmington, 910/962-3744

Western Carolina University
University of North Carolina at Asheville
Asheville, 704/251-6025
Cullowhee, 704/227-7492

Winston-Salem State University
Wake Forest University
Winston-Salem, 910/750-2030

State Headquarters
Raleigh, 919/715-7272
800/258-0862

A business and technology extension service operated as an inter-stitutional program of University of rth Carolina

The Honorable John Kerr
NC Senate
NC General Assembly
Room 526 Legislative Office Bldg.
Raleigh, NC 27601-1096

Dear Senator Kerr:

I write to you with regard to concerns which have arisen with respect to HB 987—the bill which has been introduced to attract venture capital investments from insurance companies doing business in North Carolina.

First, there are some who believe that small firms in North Carolina have adequate access to venture capital (and debt capital) and that the good deals get funded. Second, there is a presumption among some that the shortage of North Carolina based venture capital is adequately offset by the investments of out-of-state venture capital firms in North Carolina. Third, there are a few who believe that providing state incentives to attract capital is inappropriate; and somewhat more who feel that the proposed incentives to the insurance industry under HB 987 are too large.

From our experience with thousands of small to medium sized businesses, many of which were seeking outside financing, neither of the first two concerns noted are correct. We do, in fact, have a critical deficiency in the level of locally based venture capital—about 2.2% of the total U.S. pool. And this deficiency is not offset by investments from out-of-state venture capital firms—less than 1% of all venture investments were made in North Carolina in the most recently reported year.

The third concern is harder to address because it is essentially philosophically based. However, if one believes as has been the case in North Carolina since the early railroad development days that public investment incentives are appropriate tools to support economic development objectives, then the proposed incentive under HR 987 to insurance companies doing business in North Carolina may be very appropriate. It creates an effective mechanism for leveraging venture capital from one of the three major capital resource institutions in this country (pensions, insurance companies and banks), all of which have significant constraints to capital venture investments.

Venture capital investing is unique in several other respects. First, it is based more on "personal" connectedness than many other types of financing. For instance, venture firms only invest in 1% to 2% of all deals brought before them (and it's patently absurd to believe that 98% to 99% of all proposed venture deals are unworthy). As a consequence, personal contacts/connections with members of firms are an important key to accessing venture capital. It's clear, too, that venture capital firms have a strong preference for doing deals in their own back yard. They want to be able to see and touch their investments regularly and with ease. We are aware of a number of North Carolina originated deals which have been lost to the state because venture money was not found here. Venture firms also like to spread their risks. They do so by co-investing in projects with other firms.

These factors argue for the expansion of our local venture capital base. The approach proposed in HB 987 has proven effective in the two other states (Louisiana and Missouri) which have followed this model in creating relatively large venture capital pools. From our experience we, again, believe that there will be sufficient deal flow from North Carolina firms with strong growth potential should added capital for investment be available. We need to keep them here.

I hope this is helpful. I would be pleased to meet with you to discuss these issues further, if needed.

Thanks for your help.

Sincerely yours,

Scott R. Daugherty
Executive Director

SRD:ms
c:\martha\misc\HR987.doc

North Carolina Biotechnology Center

15 T.W. Alexander Drive

Post Office Box 13547

Research Triangle Park

North Carolina 27709-3547

919-541-9366

main fax 919-549-9710

24 April 1997

To *Co-Chairs, House Finance Committee:*
Representative Lyons Gray
Representative Walter W. Dickson
Representative Clyde R. Brawley
Representative Constance K. Wilson
Representative Dewey L. Hill

From Charles E. Hamner, DVM, PhD
President

Venture Capital for Young and Growing North Carolina Companies
and
HB 987

Development of new technologies and new, home-grown companies requires locally based sources of capital.

I write to urge your support of HB 987, which will increase funding available to small, rapidly growing companies in North Carolina. Experience shows that without such monies available in-state, companies are less likely to develop here – and might well move elsewhere. We can, for example, document at least two companies that have recently left the state – after being initially established here – because necessary financing was available elsewhere. In 1996, Research Triangle Pharmaceuticals moved to Canada to gain access to a government venture capital program; in 1995, Icagen, Inc., set up an R&D subsidiary in Canada for the same reason.

Other examples of North Carolina losses due to insufficient capital can be documented:

- We know of developing biopharmaceutical companies that, unable to secure capital in-state, are working with venture funds that would require them to leave North Carolina.

- The Biotechnology Center is currently in discussion with start-up companies to bring technologies to North Carolina from other states. The Center will have to wait for new appropriations before we can secure these companies for North Carolina; moreover, no other appropriate in-state funds are targeted to assist these companies.

- The state also this year lost recruitment to the Greenville area of an enormously promising biotechnology company developing pharmaceutical uses of tobacco. BioSource Technologies, based in California, looked finally at North Carolina and Kentucky as sites for its new facility. The company chose Kentucky because the state could lend it monies to move and to set up a R&D facility near the University of Kentucky.

Such losses will be replicated with other young technology companies until sufficient venture capital monies are available in North Carolina to fund them. Over time, the diminishment to our economy, technological base, and future will be enormous.

Thank you for your support and for the ongoing public service you render.

bcc: Rep. Michael Wilkins

State of Louisiana
DEPARTMENT OF ECONOMIC DEVELOPMENT

M.J. "Mike" Foster, Jr.
Governor

Kevin P. Reilly
Secretary

March 20, 1996

Mr. Joseph Driskill, Director
Missouri Department of Economic Development
Truman State Office Building
Jefferson City, Missouri 65102

Dear Mr. Driskill:

It has come to my attention that the Missouri Legislature is considering enactment of Certified Capital Company legislation. The Louisiana Capital Companies (CAPCO) Tax Credit Program was initially enacted in 1983 and provided a 35% income tax credit for investors in certified Louisiana capital companies. In 1989 the program was expanded to provide insurance companies a 120% credit against their premium taxes to be taken over a ten year period. Beginning around 1992, CAPCOs began to raise significant amounts of venture capital from insurance company investors.

We had a severe shortage of venture capital funding and this program has helped a lot. We consider the CAPCO program to be an integral part of our economic development efforts. Venture capital invested in Louisiana companies has created jobs and increased tax revenues for the state. Seed investments by CAPCOs have enabled Louisiana companies to grow and gain access to other capital provided by banks and the public security markets.

Within the Louisiana Department of Economic Development, CAPCOs are regulated by the Office of Financial Institutions (OFI). The individual at OFI most familiar with the CAPCO program is Ms. Dale Jacobs (504/922-0632). Should your staff wish to discuss CAPCO statutes or regulations or the general operation of the program, please do not hesitate to contact Ms. Jacobs.

If I can be of any assistance, please feel free to call.

Sincerely yours,

Kevin P. Reilly, Sr.
Secretary of Economic Development

KPR:gmv
wp\LEOC\ltrs\MJ.wpd
cc: Ms. Dale Jacobs, OFI

STATE OF LOUISIANA
DEPARTMENT OF REVENUE AND TAXATION

M. J. "MIKE" FOSTER, JR.
GOVERNOR

April 23, 1996

JOHN NEELY KENNEDY
SECRETARY

Mr. Joseph Driskill, Director
Missouri Department of Economic Development
Truman State Office Building
Jefferson City, Missouri 65102

Dear Mr. Driskill:

I understand that the Missouri Legislature is currently considering the adoption of legislation authorizing the creation of Certified Capital Companies in Missouri. I have been familiar with the Louisiana Certified Capital Company ("CAPCO") Tax Credit Program since serving as legal counsel to Governor Buddy Roemer in 1987-91. As a result of certain changes to the CAPCO program by the Roemer administration, Louisiana CAPCOs have generated over one hundred million dollars of new private venture capital for investment in growing Louisiana businesses.

Historically, Louisiana has lacked adequate sources of venture capital to assist new businesses in their efforts to expand and create jobs and economic opportunity for our citizens. The CAPCO program has helped to close the gap by providing seed capital for exciting technology start-ups as well as expansion financing for more established businesses with high growth potential. One company funded initially by a group of Louisiana CAPCOs has already accessed the broader securities market with an initial public offering of $180 million completed last fall.

As Secretary of the Department of Revenue and Taxation under our new Governor, Mike Foster, I am acutely aware of Louisiana's budget needs and the impact of business growth on tax revenues. Not only are we confident that the CAPCO program will contribute to the formation of new companies and the creation of well-paying jobs, but we also anticipate that the burgeoning growth of high-tech industries will over time produce tax revenues far in excess of the cost of the program. Thus, it is not surprising that this program has received broad, bi-partisan support through four gubernatorial administrations and has been extended and revised several times by legislative majorities.

I consider the CAPCO program to be an important and fiscally responsible part of our state's overall economic development plan. It is certainly worth a close and careful look in Missouri. Please contact me if I can provide you with any information that might be helpful to you in your analysis and decision-making.

Sincerely,

John Neely Kennedy

Post Office Box 201 • Baton Rouge 70821-0201
Telephone 504-925-7537 • 504-925-7533 (TDD)
An Equal Opportunity Employer

Start-up tax credits proposed

$100M would go to insurers

By JAY GALLAGHER
Albany Bureau Chief

ALBANY — The Assembly's top Democrat and a key committee chairman Tuesday proposed giving out $100 million in tax credits over 10 years to try to make it easier for start-up companies in New York to get financing.

"New York State is not attracting venture capital commensurate with our size," said Assembly Speaker Sheldon Silver, D-Manhattan. "This state needs a more aggressive approach."

In 1995, New York ranked only ninth among states in attracting venture capital, according to a report done by Silver's staff. The $224.3 million represented only 3 percent of the national total, according to the report.

"Businesses that are promising but non-traditional have difficulty obtaining the backing they need to get off the ground," said Assembly Small Business Committee chairman Joseph Morelle, D-Irondequoit.

State leaders frequently blame the relative lack of available financing for the state's lagging growth in high-tech industries compared to states like Massachusetts and California.

In fact, employment in high-tech companies actually dropped almost 2 percent in New York between 1993 and 1995, while it went up 6.3 percent in the country as a whole, according to the Assembly study.

The Assembly plan, which Silver admitted hasn't been explained to the Senate yet, calls for the state to give tax credits of $50 million in each of the next two years to insurance companies that invest in venture-capital firms.

ASSOCIATED PRESS

New York Assembly Speaker Sheldon Silver, D-Manhattan, center, along with Assemblymen Joseph D. Morello, D-Rochester, right, and Robert Sweeney, D-Suffolk County, left, announce a plan to increase venture capital in the state Tuesday in Albany.

'Businesses that are promising but non-traditional have difficulty obtaining the backing they need to get off the ground.'

Joseph Morelle, Assembly Small Business Committee chairman

The companies could take a 10 percent credit annually for 10 years.

Silver said the state would more than recoup the lost revenues from the increased business activity the investments would spark.

Morelle said the plan, targeted to small businesses, would use the money efficiently, since it would be venture capitalists and not state officials who would decide where to invest the money.

The idea got a backhanded compliment from the Empire Development Corp., Gov. George E. Pataki's main economic-development agency.

"Gov. Pataki is committed to creating jobs and he's always looking for new ideas to improve the business climate," said Empire spokeswoman Caroline Quartararo. "And since we don't get many from the Assembly, we'll be sure to take a look at this one."

The Republican-led Senate also didn't dismiss the idea out of hand, which it frequently does with proposals from the Democrat-led Assembly.

"If this is something that will help businesses, we'll certainly be supportive," said Senate Republican spokesman John McArdle.

JUL 09 '97 12:07PM ADVANTAGE CAPITAL
PP.2/2
JUL 08 1997

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 23, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	Bode Call & Stroupe
R.E. Schley	NC Rural Water Assoc.
Diana Schley	N.C. Rural Water Assoc.
Sam Taylor	Womble Carlyle
Steve Wingield	NCALC (DRYCLEANERS)
Jenny Shaffer	" "
Lori Ann Harris	Sanford Holshouser
	" "
	SBTDC
Daniel R. Schultz	Coopers & Lybrand
Scott Lajoie	Advantage Capital
Joanne E Knisel	EGHDS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 23, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cover	BPMHL
VL McBride	NCDA
E.L. Peters	NC Trucking Assn.
Mona Munchhofe	Poyner & Spruill
Doug Duncan	N.C. Forestry Assoc.
Sharon Kostrzewa	SHGRG
Molly Diggins	NC Sierra Club
Jim Hobbs	NCHMA
Paul Zigas	OSBM
Donna M. Lee	Secretary of State
Scott Templeton	SOS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 23, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Dept. of State Treasurer
[signature]	Public Staff - Util. Comm.
Arthur Mouberry	DEHNR - NRO - Groundwater Section
Sarah Fieler	DEHNR
Sabra Faires	Dept of Revenue
[signature]	V
[signature]	Dept. of Revenue
George Lamay	NCDOR
Allison Nutter	intern
[signature]	Bone Assoc / Venture Partners
[signature]	Budget & Tax Center

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 23, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gene Upchurch	CPTL
AS Swindell	BFI
John Bowdish	Webb Allen P.A.
[signature]	
VERGHOON POPER	ZDA, PA.
Suzanne Williams	Bore Ass.
[signature]	

Attachment # 3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

AMENDED REPORT

Thursday, July 24, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL #2, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.(CS#2)**859** Various Room Tax Changes.

Draft Number:	PCS7357
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: HB 859 7 23 97

Box 8

1. 1997 Senate Finance (begin July 24, 1997)
2. 1998 Senate Finance
3. 1997 Senate Judiciary (cont'd. to Box 9)

SENATE FINANCE COMMITTEE

THURSDAY, JULY 24, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met. There were 21 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order and introduced the Pages, they were Michelle Gilliam from Raleigh, N. C., sponsored by Senator Basnight and Kanika Johnson from Knightdale, N. C., sponsored by Senator Ballance.

H. B. 485 - Funeral Establishments

Representative Dockham came to explain the bill. Mr. Bill Hoke representing the N. C. Licensing Board for Funeral Homes spoke on the bill. Senator Hartsell moved for a "favorable" report, motion passed.

H. B. 225 - Dry-Cleaning Solvent Cleanup Act

Representative Weatherly came to explain the Bill. Senator Rand moved for adoption of proposed committee substitute, motion passed. Mr. Denny Shaffer with the N. C. Laundry & Cleaners Association spoke on the Bill, Mr. Richard Whisnant, General Counselor for DEHNR, spoke on the Bill. Senator Hoyle stated that there would be two (2) amendments to this committee substitute bill. Senator Hoyle sent forth the first amendment and made motion for adoption, motion passed. Mr. George Givens, Staff Counsel, read the second proposed amendment. Senator Albertson made a motion for adoption of the second amendment, motion passed. Senator Rand moved for a "favorable" report, motion passed.

H. B. 631 - Forsyth Local Act

Representative Decker came to explain the bill. Senator McDaniel moved for a "favorable" report, motion passed.

H. B. 566 - Wake Schools Development Changes

Representative Ellis explained the bill. Senator Rand moved for a "favorable" report, motion passed.

H. B. 568 - Wake Forest Annexation

Representative Ellis explained the Bill. Senator Rand made a motion for adoption of a committee substitute, motion passed. Senator McDaniel made a motion for a "favorable" report, motion passed.

H. B. 495 - Natural Gas

Representative Owens came to explain the Bill. Senator Cooper moved for adoption of a proposed committee substitute, motion passed. Senator Robert Shaw made a motion for a "favorable" report, motion passed.

H. B. 1027 - State Treasurer Venture Capital

Representative Owens came to explain the bill. Mr. Doug Chappell with the State Treasurer's Office spoke on the Bill. Mr. Rick Carlisle from the Department of Commerce spoke on the Bill. Senator Hoyle stated that this Bill might possibly be put into a study committee. He stated further that the decision would be made and that the Members of this Committee would be so advised.

H. B. 990 - Exempt Certain Nonprofit Utilities

Senator Phillips came to explain this Bill again (NOTE: Bill was first taken up for discussion at 7-23-97 Senate Finance Committee Meeting). Senator Hartsell made a motion for a "favorable" report on proposed committee substitute, motion passed.

Senator Hoyle advised the Committee that today would be Allison Stiles', Intern for Senator Hoyle, last Meeting with us. He expressed to Allison appreciation for all of her hard work for the Committee.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report dated 7-28-97 is Attachment # 3
Committee Report dated 8-4-97 is Attachment # 4

Attachment #1

AGENDA

SENATE FINANCE COMMITTEE

THURSDAY, JULY 24, 1997

8:30 A.M., ROOM 544

H.B. 225 - Dry-Cleaning Solvent Cleanup Act. - Rep. Weatherly

H.B. 990 - Exempt Certain Nonprofit Utilities - Rep. Church

H.B. 485 - Funeral Establishments - Rep. Dockham

H.B. 495 - Natural Gas - Rep. Owens

H.B. 631 - Forsyth Local Act - Rep. Decker

H.B. 1027 - State Treasurer Venture Capital - Rep. Owens

H.B. 566 - Wake Schools Development Changes - Rep. Ellis

H.B. 568 - Wake Forest Annexation - Rep. Ellis

EXPLANATION OF HOUSE BILL 485:
Funeral Establishment (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 23, 1997
SPONSOR: Representative Dockham
Agency Bill (The North Carolina Board of Mortuary Science)

House Bill 485 makes several changes to the statutes governing funeral services, cremation, and preneed funeral contracts. The bill becomes effective October 1, 1997. The bill is before the Finance Committee because of the following changes in the law:

1. Clarification that the reinspection fee of $100 applies to embalming facilities that are not contained in funeral homes. (page 12)
2. The establishment of a crematory license year and an annual renewal process. The annual renewal fee is already set by statute at $150. Pages 14)
3. The bill establishes a list of late fee requirements for late renewals and for late reports. The late renewal fees are currently set by statute. The fee for filing a cremation report late is set at $75 a month and the late penalty for paying the $10 per cremation fee is set at $10. (page 17)
4. Provides that a crematory must pay a reinspection fee of $100 when a reinspection is necessary. (page 15 and 17)
5. Allows the Board to accept a monetary offer of not more than $1,000 instead of suspending or revoking the license of a funeral establishment or a crematory. (pages 15 and 22)
6. Establishes a preneed license year for a preneed funeral establishment and annual renewal procedures. The annual renewal fee may not exceed $150. The bill sets a late renewal fee of an amount that may not exceed $100. (page 19)
7. Establishes a license year for a preneed sales license and its annual renewal procedures. The annual renewal fee many not exceed $50. The bill sets a late renewal fee of an amount that may not exceed $25. (page 19-20)
8. When a preneed funeral contract is sold, the licensee must remit a fee of $15 to the Board. The bill provides that this fee may be increased up to $20 and it sets a late filing and payment fee of an amount not to exceed $25. (page 20)

9. The bill also sets a late fee for the late filing of a certificate of performance ($25) and for the late filing of an annual report ($150); it also establishes a reinspection fee for preneed licensee of up to $100. (page 20)

Some of the other changes made by the bill include:

1. Giving the Board the authority to inspect embalming facilities that are not contained in funeral homes and requiring these facilities to be registered with the Board.
2. Recognizing the existence of limited liability companies.
3. Changing the contents of funeral directing and service examinations and embalming examinations to conform with the contents of examinations currently being given throughout the United States.
4. Establishing an inactive license that will allow a inactive licensee to vote for the members of the Board.
5. Setting the requirements for cremation reports, requiring a body to be enclosed in a container when it is cremated, and requiring the crematory operator to have a signed cremation authorization form before cremating a body.
6. Requiring a funeral home that is paid through a preneed funeral contract to mail proof of its performance of the contract to the Board, requiring a preneed licensee to divest itself of all the preneed contracts it holds when it is no longer licensed, and specifying that the names and addresses of preneed contract purchasers and beneficiaries are not public records.
7. Deleting the requirement that the Board use an administrative law judge for its hearings.
8. Deleting the requirement that the Board report evidence of misdemeanors to district attorney.
9. Setting the order of priority in authorizing the disposition of body or body parts.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 485 (Third Edition)

SHORT TITLE: Funeral Establishments/AB

SPONSOR(S): Rep. Dockham

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Board Operating Fund		Up to $105,000 revenue gain each year.			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Mortuary Science

EFFECTIVE DATE: Effective October 1, 1997.

BILL SUMMARY: This bill makes changes to various statutes dealing with the practice of funeral service, cremations, and funeral and burial trust funds. HB 485 was referred to the Finance Committee because of a fee increase on preneed funeral contract licenses, new late fees imposed on delinquent payments by crematory and preneed licensees, and a reinspection fee for preneed licensees.

ASSUMPTIONS AND METHODOLOGY:
Section 27 of the bill gives the Board of Mortuary Science the right to increase the fee on preneed funeral contracts. Part (d) of G. S. 90-210.67 is amended to increase from $15 to $20 the maximum amount that can be charged for each license. The 600 funeral homes licensed to sell preneed contracts in the state remitted to the Board $312,765 in 1995 and $318,180 in 1996 from this license. Based on this experience, every $1 increase in this fee equals approximately $21,000. If the Board chooses to utilize the full $5 increase, then the revenue increase will be $105,000. The Board has no incentive to increase the fee by $5 unless it truly needs the revenue, because it may retain only an amount equal to 20% of gross receipts and the rest is transferred to the General Fund.

Several sections of the bill add late fees for delinquent payments. Section 22 adds a late fee for crematories that do not submit their cremation fees ($10 late fee per cremation) and their cremation report ($75 per month past due date) in a timely manner. Only 2 of the 37 crematories in the state are habitual offenders of the filing deadlines. No revenue is projected from these late fees, because the Board thinks the late penalties will encourage the delinquent filers to follow Board rules. Section 27 adds a late fee for failure to timely renew a preneed funeral establishment license ($100) or a preneed sales license ($25) and failure to timely file a certificate of performance ($150). Again, no revenue is anticipated from the late fees, because the Board believes the threat of late fees will encourage compliance with their deadlines.

There are two other sections that add a new license, but there is no revenue impact. Section 9 adds a new inactive license for individuals, but no fee is charged. A $100 reinspection fee for preneed licensees is added in Section 28, but little or no revenue is expected since the Board has done only 2 reinspections in 5 years.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY: Tom Covington
DATE: July 23, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 225*
Committee Substitute Favorable 5/22/97
Committee Substitute #2 Favorable 7/7/97

Short Title: Dry-Cleaning Solvent Cleanup Act. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT CONTAMINATION IN NORTH CAROLINA, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

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

"Part 6. Dry-Cleaning Solvent Cleanup.

"**§ 143-215.104A. Title.**

This Part is the 'North Carolina Dry-Cleaning Solvent Cleanup Act' and may be cited by that name.

"**§ 143-215.104B. Definitions.**

(a) Unless a difference meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 143-215.77, 130A-2, and 130A-290 apply throughout this Part.

(b) Unless a different meaning is required by the context, the following definitions apply in this Part:

(1) 'Abandoned dry-cleaning facility site' or 'abandoned site' means any real property or individual leasehold space on which a dry-cleaning facility or wholesale distribution facility formerly operated.

(2) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(3) 'Commission' means the North Carolina Environmental Management Commission.

(4) 'Contaminant' means a regulated substance released into the environment.

(5) 'Current standards' when used in connection with 'cleanup', 'remediated', or 'remediation' means that cleanup or remediation of contamination comply with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the Commission, the Commission for Health Services, or the Department instead of the risk-based standards established by the Commission pursuant to this Part.

(6) 'Department' means the North Carolina Department of Environment, Health, and Natural Resources.

(7) 'Disposal' shall have the meaning ascribed to it in G.S. 130A-290.

(8) 'Dry-cleaning facility' means a place of business located in this State and engaged in on-site dry-cleaning operations, other than a commercial uniform service or commercial linen supply facility.

(9) 'Dry-cleaning operations' means cleaning of apparel and household fabrics by using one or more dry-cleaning solvents instead of water.

(10) 'Dry-cleaning solvent' means Perchloroethylene F-1,1,3 or 1,1,1 tricholorethane, a petroleum-based solvent, another comparable product used as a cleaning agent in a dry-cleaning operation or the degradation products from such hazardous substances.

(11) 'Dry-Cleaning Solvent Assessment Agreement' or 'assessment agreement' means an agreement between the Commission and a potentially responsible party who desires to access whether a release of dry-cleaning solvents at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility may be eligible for remediation under this Part and whether any other contaminants, which are identified in the agreement, may require remediation under other remedial programs operated or administered by the Department.

(12) 'Dry-Cleaning Solvent Remediation Agreement' or 'remediation agreement' means an agreement between the Commission and a potentially responsible party who desires to clean up dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility under this Part and any other contaminants, which are identified in the agreement, under other remedial programs operated or administered by the Department.

(13) 'Dry-cleaning solvent contamination' means, for the purposes of determining eligibility for participation under this Part only, the presence of dry-cleaning solvent in the waters or surface or subsurface soils of the State, the bedrock or other rock formations, or buildings in a concentration above the level requiring remediation pursuant to the rules implementing Article 21A of Chapter 143.

(14) 'Facility' means a dry-cleaning facility or a wholesale distribution facility.

(15) 'Fund' means the Dry-Cleaning Solvent Cleanup Fund.

(16) 'Hazardous waste' shall have the meaning ascribed to it in G.S. 130A-290.

(17) 'Imminent hazard' means a situation which is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

(18) 'Local government' means a town, city, or county.

(18a) 'Operator' means any person operating a dry-cleaning facility or wholesale distribution facility, whether by lease, contract, or any other form of agreement.

(19) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(20) 'Pollution and remediation legal liability insurance' means property and casualty insurance coverage on a claims-made for response costs authorized to be reimbursed from the Fund in G.S. 143-215.104N(a).

(21) 'Potentially responsible party' means any person who may have liability for assessment, monitoring, treatment, mitigation, or remediation of dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility.

(22) 'Public health' means public health as the term is used in Article 9 of Chapter 130A of the General Statutes and 'human health' as the term is used in Articles 21 and 21A of Chapter 143 of the General Statutes.

(23) 'Regulated substance' means a hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program implemented by the Department other than Part 2A of Article 21A of Chapter 143 of the General Statutes.

(24) 'Release' means any spillage, leakage, pumping, placement, emptying, or dumping of dry-cleaning solvents resulting from a

dry-cleaning operation or the operation of a wholesale distribution facility.

(25) 'Remedial program' means a program implemented by the Department for the remediation of any contaminant, including the programs implemented under Article 9 of Chapter 130A of the General Statutes and the Oil Pollution and Hazardous Substances Control Act of 1978 under Part 2 of Article 21a of Chapter 143 of the General Statutes but not the remedial program implemented under Part 2A of Article 21A of Chapter 143 of the General Statutes.

(26) 'Remediation' means action to cleanup, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transporting, or further release of a contaminant into the environment in order to protect public health or the environment.

(27) 'Response costs' means costs incurred in connection with a certified facility or abandoned site which the Commission determines are reasonably necessary and consistent with the applicable requirements of the Commission and any applicable Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement.

(28) 'Secretary' means the North Carolina Secretary of Environment, Health, and Natural Resources.

(29) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(30) 'Treatment' shall have the meaning ascribed to it in G.S. 130A-290.

(31) 'Waters' means any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction.

(32) 'Wholesale distributor' means a person who operates a wholesale distribution facility.

(33) 'Wholesale distribution facility' means a place of business located in this State and engaged in the storage, distribution, or sale of dry-cleaning solvents for use in dry-cleaning facilities.

"**§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.**

(a) Creation. -- The Dry-Cleaning Solvent Cleanup Fund is established as a special revenue fund to be administered by the Commission. Accordingly, revenue in the Fund at the end of a fiscal year does not revert and interest and other investment

income earned by the Fund must be credited to it. The Fund is created to provide revenue to implement this Part.

(b) Sources of Revenue. -- The following revenue is credited to the Fund:

(1) Dry-cleaning solvent taxes collected under Article 5D of Chapter 105 of the General Statutes.

(2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-215.104O.

(3) Gifts and grants made to the Fund.

(c) Disbursements. -- A claim filed against the Fund may be paid only from revenue in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse response costs pursuant to this Part shall be expressly contingent upon availability of monies in the Fund, and the State and its departments and agencies shall have no obligation to pay or reimburse eligible expenses if monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse response costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall pay the claims with the highest priority before claims of lower priority, and claims of equal priority in the order in which the facility or abandoned site was certified until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards caused by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites which have not been certified. Up to twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities.

"§ 143-215.104D. Powers of the Commission.

(a) Administrative Functions. -- The Commission may delegate any or all of the powers enumerated in this subsection to the Department or engage a private contractor or contractors to carry out the activities enumerated in this subsection. If the Commission engages a private contractor to carry out the functions enumerated in subdivisions (1) through (6) of this subsection, no action of the contractor shall be effective until ratified by the Commission. The Commission shall:

(1) Accept petitions for certification and petitions to enter into dry-cleaning solvent assessment or remediation agreements under this Part.

(2) Prioritize certified dry-cleaning facilities, certified wholesale distribution facilities, or certified abandoned dry-cleaning facility sites for the initiation of assessment or remediation activities that are reimbursable from the Fund.

(3) Develop forms to be used by persons applying for reimbursement of assessment or remediation costs.

(4) Schedule funding of assessment and remedial response activities.

(5) Determine whether assessment or remediation is necessary at a contamination site.

(6) Determine that all necessary assessment and remediation has been completed at a contamination site.

(7) Make payments from the Fund to reimburse the costs of assessment and remediation, provided, however, that any such payments made by a private contractor engaged by the Commission shall be authorized by the Commission prior to disbursement.

(b) Rulemaking. -- The Commission shall adopt such rules as are necessary to implement the provisions of this Part. Rules adopted by the Commission shall be consistent with and shall not duplicate, but may incorporate by reference, the rules adopted by the Commission for Health Services pursuant to Article 9 of Chapter 130A of the General Statutes. The Commission shall not delegate the rule-making powers provided in this subsection.

(1) The Commission may adopt rules governing:

a. Fees for response costs reimbursable under this Part.

b. The certification and decertification of facilities or abandoned sites.

c. The prioritization of facilities or abandoned sites and scheduling of funding for assessment and remedial response activities. These rules shall take into consideration the degree of harm or risk to public health and the environment; the order in which certification issued for the facility or abandoned site; and other factors the Commission finds appropriate in the use of the Fund to maximize the reduction of harm or risk posed by certified facilities, certified abandoned sites, and uncertified facilities and sites.

d. The disbursement of revenue from the Fund for payment or reimbursement of approved assessment or remedial responses costs.

e. The determination whether assessment or remediation is necessary at a contamination site.

f. The determination that all necessary assessment and remediation has been completed at a contamination site.

g. The terms and conditions of dry-cleaning solvent assessment and remediation agreements.

h. The determination whether additional assessment or remediation is necessary at a contamination site previously closed under this Part.

(2) The Commission may adopt rules establishing minimum management practices for handling of dry-cleaning solvent at dry-cleaning facilities and wholesale distribution facilities. The rules may:

a. Require that all perchloroethylene dry-cleaning machines installed at a dry-cleaning facility after the effective date of the rule or temporary rule meet air emission standards that equal or exceed the standards that apply to comparable dry-to-dry perchloroethylene dry-cleaning machines with integral refrigerated condensation.

b. Prohibit the discharge of dry-cleaning solvents or water that contains dry-cleaning solvents into sanitary sewers, septic systems, storm sewers, or waters of the State.

c. Require spill containment structures around dry-cleaning machines, filters, stills, vapor absorbers, solvent storage areas, and waste solvent storage areas.

d. Require floor sealants for cleaning room areas, provided that the Commission finds the sealants to be effective.

e. Require, by 1 January 2002, the use of improved solvent transfer systems to prevent releases at the time of delivery of solvents to a dry-cleaning facility.

f. Require any solvent handling practices the Commission may find necessary and appropriate to minimize the risk of releases at wholesale distribution facilities.

(3) The Commission shall adopt rules establishing a risk-based approach applicable to the assessment, prioritization, and cleanup of dry-cleaning solvent contamination resulting from releases at facilities or abandoned sites certified pursuant to G.S. 143-215.104G. The rules shall address, at a minimum:

a. Criteria and methods for determining cleanup requirements, including the level of cleanup necessary to assure adequate protection of public health and the environment.

b. The circumstances under which information specific to the dry-cleaning solvent contamination site should be considered and required.

c. The circumstances under which restrictions on the future use of any remediated dry-cleaning solvent contamination site should be considered and required as a means of achieving and maintaining an adequate level of protection for public health and the environment.

d. Strategies for the assessment and remediation of dry-cleaning solvent contamination, including presumptive remedial responses sufficient to provide an adequate level of protection as described under sub-subdivision a. of this subdivision.

(c) All rules adopted by the Commission shall be applicable to all dry-cleaning facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities in the State and shall, to the maximum extent practicable, be cost-effective and technically

feasible while protecting public health and the environment from the release of dry-cleaning solvents.

(d) Unless otherwise provided in this Part, the Commission may delegate any of its rights, duties, and responsibilities under this Part to the Department.

"§ 143-215.104E. Requirement of financial responsibility for dry-cleaning facilities.

(a) The owner or operator of any dry-cleaning facility or any wholesale distribution facility operating in the State shall establish and continuously maintain financial responsibility for legal liability arising in connection with dry-cleaning solvent contamination resulting from a release at the facility by either:

(1) Obtaining pollution and remediation legal liability insurance for the facility with coverage limits not less than one million dollars ($1,000,000) from an insurance carrier authorized to do business in this State, or

(2) Depositing with the Commission, securities or a third-party bond acceptable to the Commission in an amount not less than one million dollars ($1,000,000).

(b) If the owner or operator of a dry-cleaning facility or any wholesale distribution facility demonstrates to the satisfaction of the Commission an inability to establish financial responsibility consistent with the standards of subsection (a) of this section, then the Commission shall issue a determination of uninsurability to the operator of the facility. When a facility is designated as uninsurable by the Commission, the financial responsibility requirements of subsection (a) of this section are satisfied.

(c) Unless the Commissioner of Insurance adopts rules providing otherwise, a dry-cleaning facility or wholesale distribution facility shall be determined to be uninsurable if the annual premium for coverage of the dry-cleaning facility or wholesale distribution facility meeting the requirements of this Part is more than three times the average premium for similar coverage for dry-cleaning facilities or wholesale distribution facilities where dry-cleaning solvent contamination is not known to have occurred. Each insurer selling pollution and remediation legal liability insurance in this State shall annually report to the Commission the number of policies held in force by the company in this State for dry-cleaning facilities and for wholesale distribution facilities, and the average premium rate for each type of facility. The first report required by this section shall be made no later than 1 January 1998.

(d) Dry-cleaning facilities and abandoned dry-cleaning facility sites located on a United States military base or owned by the United States or a department or agency of the United States and dry-cleaning facilities and abandoned dry-cleaning facility sites owned by the State or an agency or department of the State are exempt from complying with this section.

"§ 143-215.104F. Requirements for certification, assessment agreements, and remediation agreements.

(a) Any person petitioning for certification of a facility or abandoned site pursuant to G.S. 143-215.104G, for a Dry-Cleaning Solvent Assessment Agreement pursuant to G.S. 143-215.104H, or for a Dry-Cleaning Solvent Remediation Agreement pursuant

to G.S. 143-215.104I, shall meet the requirements set out in this section and any other applicable requirements of this Part.

(b) Requirements for Potentially Responsible Persons Generally. -- Every petitioner shall provide the Commission with:

(1) Information necessary for the Commission to determine the priority ranking of the facility or abandoned site described in the petition.

(2) Information necessary to demonstrate the person's ability to incur the response costs specified in subsection (e) of this section.

(3) Evidence of financial responsibility established in accordance with G.S. 143-104.215E(a) or a copy of a determination of uninsurability issued by the Commission pursuant to G.S. 143-25.104E(b).

(c) Requirement for Property Owners. -- In addition to the information required by subsection (b) of this section, a petitioner who is the owner of the property on which the dry-cleaning solvent contamination identified in the petition is located shall provide the Commission a written agreement authorizing the Commission or its agent to have access to the property for purposes of determining whether assessment or remediation activities are being conducted in compliance with this Part and any assessment or remediation agreement.

(d) The Commission shall reject any petition made pursuant to this Part in any of the following circumstances:

(1) The petitioner is an owner or operator of the facility described in the petition and the facility was not being operated in compliance with minimum management practices adopted by the Commission pursuant to G.S. 143-215.104D(b)(2) at the time the contamination was discovered.

(2) The petitioner is an owner or operator of a facility described in the petition and the petitioner owed delinquent taxes under Article 5D of Chapter 105 of the General Statutes at the time the dry-cleaning solvent contamination was discovered.

(3) The petitioner is the owner or operator of the facility described in the petition and the petitioner had failed, at the time the contamination was discovered, to establish financial responsibility for the facility pursuant to G.S. 143-215.104E(a) or to obtain a determination of uninsurability pursuant to G.S. 143-215.104E(b).

(e) The Commission may reject any petition made pursuant to this Part in any of the following circumstances:

(1) The petitioner fails to provide the information required by subsection (b) of this section.

(2) The petitioner falsified any information in its petition which was material to the determination of the priority ranking, the nature, scope and extent of contamination to be assessed or remediated, or the appropriate means to contain and remediate the contaminants.

(f) Financial Responsibility Requirements. -- Each potentially responsible person who petitions the Commission to enter into a Dry-Cleaning Solvent Assessment or Remediation Agreement shall accept written responsibility in the amount specified in this section for the assessment or remediation of the dry-cleaning solvent contamination identified in the petition. If two or more potentially responsible persons petition the Commission jointly, the requirements below shall be the aggregate requirements for the financial responsibility of all potentially responsible persons who are party to the petition. Unless an alternative arrangement is agreed to by copetitioners, the financial responsibility requirements of this section shall be apportioned equally among the copetitioners. The requirements in this subsection shall be in addition to any insurance or other financial responsibility, including deductibles or retentions, established pursuant to G.S. 143-215.104E.

Facility or Abandoned Site Where Release Occurred	Costs
Dry-cleaning facilities owned by persons who employ fewer than five full-time employees or the equivalent in activities related to dry-cleaning operations during the preceding calendar year	$5,000
Dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees or their equivalent in activities related to dry-cleaning operations during the preceding calendar year	$10,000
Dry-cleaning facilities owned by persons who employ 10 or more full-time employees or their equivalent in activities related to dry-cleaning operations during the preceding calendar year	$15,000
Wholesale distribution facilities	$25,000
Abandoned dry-cleaning facility sites	$50,000

Provided, however, that if a dry-cleaning facility is determined to be uninsurable, the financial responsibility requirements for the facility shall be three times the amount provided above; and provided further, that the financial responsibility requirement for a wholesale distribution facility that is determined to be uninsurable shall be fifty thousand dollars ($50,000).

"**§ 143-215.104G. Certification of facilities and abandoned sites.**

(a) A potentially responsible party who meets the applicable requirements of G.S. 143-215.104F may petition the Commission to certify a facility or abandoned site where a release of dry-cleaning solvent is believed to have occurred. The Commission shall certify the facility or abandoned site if the petitioner meets the requirements of this Part. Upon its decision to certify a facility or abandoned site, the Commission shall inform the petitioner of its decision and of the initial priority ranking of the facility or site.

(b) The Commission may change the initial priority rankings of any facility or abandoned site as additional facilities or abandoned sites are certified which are determined by the Commission, in its sole discretion, to pose a higher degree of harm or risk to public health and the environment; provided, however, that the Commission shall not change the priority ranking of an abandoned site that is set in a Dry-Cleaning Solvent Remediation Agreement.

(c) A potentially responsible person petitioning for certification of a facility or abandoned site shall provide the Commission with either of the following:

(1) A proposed Dry-Cleaning Solvent Assessment or Remediation Agreement, or an indication of the petitioner's intent to enter into such an agreement.

(2) A written statement of the petitioner's intent to conduct assessment and remediation activities pursuant to subsection (d) of this section.

(d) A person who has access to the property on which a facility or abandoned site is located and who has successfully petitioned for certification of the abandoned site pursuant to this section may undertake assessment or remediation of dry-cleaning solvent contamination located on the property consistent with the standards established by the Commission pursuant to G.S. 143-215.104D(b)(3) without first entering into a Dry-Cleaning Solvent Assessment Agreement or a Dry-Cleaning Solvent Remediation Agreement; provided, however, no assessment or remediation activities undertaken pursuant to this subsection shall rely on standards that require the creation of land-use restrictions. A person who undertakes assessment or remediation activities pursuant to this subsection shall provide the Commission prior written notice of the activity. Costs associated with assessment or remediation activities undertaken pursuant to this subsection shall not be eligible for reimbursement from the Fund.

(e) The rejection of any petition filed pursuant to this section shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The rejection of a petition or the decertification of a facility or abandoned site may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

"**§ 143-215.104H. Dry-Cleaning Solvent Assessment Agreements.**

(a) Assessment Agreements. -- One or more potentially responsible parties may petition the Commission to enter into a Dry-Cleaning Solvent Assessment Agreement regarding a facility or abandoned site that has been certified pursuant to G.S. 143-215.104G and for which the party may have responsibility. The Commission may, in its discretion, enter into an assessment agreement with any potentially responsible party who satisfied the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into an assessment agreement pursuant to this section. Petitioners shall provide the Commission with any information necessary to demonstrate:

(1) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the adjusted priority ranking which the petitioner agrees to accept is consistent with the rules adopted by the Commission.

(2) The projected schedule for funding of assessment activities, including reimbursements from the Fund.

(3) The assessment activities to be undertaken with respect to the dry-cleaning solvent contamination and any other contamination at the contamination site.

(4) The person who will be responsible for implementation of the activities is capable and qualified to conduct the assessment.

(5) The financial responsibilities of the petitioner with respect to the costs of the assessment activities and the ability to meet those responsibilities.

(6) The permits or other authorizations required to conduct the assessment activities and to lawfully dispose of any hazardous substances or wastes generated by the assessment activities have been or can be obtained.

(7) The assessment activities will not increase the existing level of public exposure to health or environmental hazards at the contamination site.

(8) The petitioner continues to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(9) The response costs to be incurred in connection with the agreement are reasonable and necessary.

(10) The consent of other property owners to enter into their property for purpose of conducting assessment activities specified in the assessment agreement.

(11) The date that any necessary remediation of the contamination site could begin assuming the availability of monies in the Fund.

(b) The terms and conditions of an assessment agreement regarding dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. Agreements shall provide, subject to availability of monies in the Fund, for prompt reimbursement of response costs incurred in assessment activities that are found by the Commission to be consistent with the assessment agreement and this Part.

(c) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement with any potentially responsible person if:

(1) The petitioner will not accept financial responsibility for the share of the response costs established in G.S. 143-215.104F.

(2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking assessment activities required by the Commission.

(3) The petitioner fails to provide any information required by subsection (a) of this section.

(d) The refusal of the Commission to enter into a Dry-Cleaning Solvent Assessment Agreement with any potentially responsible person shall not affect the rights of any other petitioner, other than any parent, subsidiary or other affiliate of the petitioner, other than any parent, subsidiary or other affiliate of the petitioner, under this Part. The refusal of the Commission to enter into an agreement may be the basis for rejection of a petition by any parent, subsidiary or other affiliate of the petitioner for the facility or abandoned site.

(e) If the Commission determines from the assessment prepared pursuant to this Part that the degree of risk to public health or the environment resulting from dry-cleaning solvent contamination otherwise subject to assessment or remediation under this Part and Article 9 of Chapter 130A is acceptable in light of the criteria established pursuant to G.S. 143-215.104D(b)(3) and Article 9 of Chapter 130A, the Commission shall issue a written statement of its determination and notify the owner or operator of the facility or abandoned site responsible for the contamination that no cleanup, no further cleanup, or no further action is required in connection with the contamination.

(f) If the Commission determines that no remediation or further action is required in connection with dry-cleaning solvent contamination otherwise subject to assessment or remediation pursuant to this Part and Article 9 of Chapter 130A, the Commission shall not pay or reimburse any response costs otherwise payable or reimbursable under this Part from the Fund other than costs reasonable and necessary to conduct the risk assessment pursuant to this section and in compliance with a Dry-Cleaning Solvent Assessment Agreement.

"**§ 143-215.104I. Dry-Cleaning Solvent Remediation Agreements.**

(a) Upon the completion of assessment activities required by a Dry-Cleaning Solvent Assessment Agreement, a potentially responsible party may petition the Commission to enter into a Dry-Cleaning Solvent Remediation Agreement for any contamination requiring remediation. The Commission may, in its discretion, enter into a remediation agreement with any petitioner who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into an assessment agreement pursuant to this section. The Commission may, in its discretion, enter into a remediation agreement that includes the assessment described in G.S. 143-215.104H. Petitioners shall provide the Commission with any information necessary to demonstrate that:

(1) The petitioner, and any parent, subsidiary or other affiliate of the petitioner has substantially complied with:

a. The terms of the Dry-Cleaning Solvent Assessment Agreement and any Dry-Cleaning Solvent Remediation Agreement, brownfields agreement or similar agreement to which the requesting party, or any parent, subsidiary or other affiliate of the requesting person has been a party.

b. The requirements applicable to any remediation in which the petitioner has previously engaged.

c. Federal and State laws, regulations, and rules for the protection of the environment.

(2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the agreement while fully protecting public health and the environment from dry-cleaning solvent contamination and any other contaminants included in the remediation agreement instead of being remediated to current standards.

(3) There is a public benefit commensurate with the liability protection provided under this Part.

(4) The petitioner has or can obtain the financial, managerial, and technical means to fully implement the remediation agreement and assure the safe use of the contamination site.

(5) The petitioner has complied with or will comply with all applicable procedural requirements.

(6) The agreement will not cause the Department to violate, or potentially violate, the terms and conditions under which it operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General Statutes, by delegation or similar authorization from the United States or its departments or agencies including the Environmental Protection Agency.

(7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the adjusted priority ranking which the petitioner agrees to accept is consistent with the rules adopted by the Commission.

(8) The projected schedule for funding of remediation activities, including reimbursements from the Fund.

(9) The petitioner continues to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(10) The expenditures eligible for reimbursement from the Fund and to be incurred in connection with the agreement are reasonable and necessary.

(11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the assessment agreement.

(b) In negotiating a remediation agreement, parties may rely on land-use restrictions that will be included in a notice of Dry-Cleaning Solvent Remediation notice required under G.S. 143-215.104M. A remediations agreement may provide for remediations standards that are based on those land-use restriction.

(c) A Dry-Cleaning Solvent Remediation Agreement shall contain a description of the contamination site that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

(1) Any remediation, including remediation of contaminants other than dry-cleaning solvents, to be conducted on the property, including:

a. A description of specific areas where remediation is to be conducted.

b. The remediation method or methods to be employed.

c. The resources that the petitioner will make available and the degree to which the petitioner intends to rely on the Fund for resources.

d. A schedule of remediation activities.

e. Applicable remediation methods which for dry-cleaning solvent contamination shall not be in excess of the requirements adopted by the Commission pursuant to G.S. 143-104D(b)(3).

f. A schedule and the method or methods for evaluating the remediation.

(2) Any land-use restrictions that will apply to the contamination site or other property.

(3) The desired results of any remediation or land-use restrictions with respect to the contamination site.

(4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.

(5) The consequences of achieving or not achieving the desired results.

(6) The final priority ranking of the facility or abandoned site.

(7) The person who will conduct the remediation if that person is not the potentially responsible party entering the agreement.

(d) In addition to the bases in subsection (c) of this section, the Commission may refuse to enter into a dry-cleaning solvent assessment or remediation agreement with any potentially responsible person if:

(1) The petitioner will not accept financial responsibility for the share of the response costs established in G.S. 143-215.104F. This requirement shall not apply to a potentially responsible person who (i) is the owner of property upon which the dry-cleaning solvent contamination is located, and (ii) is not a current or former owner or operator of a facility believed to be responsible for the contamination.

(2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking remediation activities required by the Commission.

(3) The petitioner does not provide any information that is necessary to demonstrate the facts required to be shown by subsection (a) of this section.

(e) In addition to the bases set forth in subsection (d) of this section, the Commission may refuse to enter into a dry-cleaning solvent remediation agreement with the owner of the property on which a contamination site is located if the owner refuses to accept limitations on the future use of the property and to give notice of such limitations pursuant to G.S. 143-215.104M.

(f) The refusal of the Commission to enter into a Dry-Cleaning Remediation Agreement with any potentially responsible person shall not affect the rights of any other petitioner, other than any parent, subsidiary or other affiliate of the petitioner, under this Part. The refusal of the Commission to enter into an agreement may be the basis for rejection of a petition by any parent, subsidiary or other affiliate of the petitioner for the facility or abandoned site.

(g) The terms and conditions of a Dry-Cleaning Solvent Remediation Agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. Agreements shall provide, subject to availability of monies in the Fund, for prompt reimbursement of response costs incurred in assessment activities that are found by the Commission to be consistent with the remediation agreement and this Part.

(h) Any failure of the requesting person or the requesting person's agents or employees to comply with the Dry-Cleaning Solvent Remediation Agreement constitutes a violation of this part by the requesting party.

"§ 143-215.104J. Decertification; termination of assessment or remediation agreements.

(a) The Commission may decertify a facility or abandoned site, renegotiate a Dry-Cleaning Solvent Assessment or Remediation Agreement, or terminate a Dry-Cleaning Solvent Assessment or Remediation Agreement with respect to any party thereto in the following circumstances:

(1) The owner or operator of the facility, at any time subsequent to the certification of the facility, violates any of the minimum management requirements adopted by the Commission pursuant to G.S. 143-215.104D(b)(2).

(2) In the case of dry-cleaning contamination on property that is owned by a petitioner, the petitioner fails to file a notice of dry-cleaning solvent remediation as provided in G.S. 143-215.104M.

(3) The potentially responsible persons who are parties to a Dry-Cleaning Solvent Assessment Agreement are unable to reach an agreement with the Commission to enter into a Dry-Cleaning

Solvent Remediation Agreement within the time specified in the assessment agreement.

(4) The payment of taxes assessed to the facility under Article 5D of Chapter 105 of the General Statutes is delinquent.

(5) The financial responsibility to meet the requirement of G.S. 143-215.104E is not maintained continuously for any facility, unless a determination of uninsurability has been issued for the facility.

(6) The owner or operator fails to comply with all applicable requirements of this Part to complete any assessment or remediation activities required by a Dry-Cleaning Solvent Assessment and Remediation Agreement.

(7) The owner or operator of a facility where assessment or remediation activities are scheduled or in progress transfers the ownership or operation of the facility or abandoned site to another person without the prior consent of the Commission and the execution of a substitute Dry-Cleaning Solvent Assessment or Remediation Agreement.

(8) The standards applied to the dry-cleaning solvent contamination remediation or containment under the provisions of this Part and the Dry-Cleaning Solvent Remediation Agreement will, or are likely to, cause the Department to fail to comply with the terms and conditions under which it operates and administers a remediation program by delegation or similar authorization from the United States or one of its departments and agencies, including the Environmental Protection Agency.

(b) Prior to decertifying any facility or abandoned site or renegotiating or terminating any assessment or remediation agreement, the Commission shall give the petitioners notice and opportunity for hearing. The Commission is not required to give the petitioners notice and opportunity for hearing when the Commission reasonably takes an emergency action to abate an imminent hazard caused by or arising from assessment or remediation activities at a contamination site whether the Commission issues a special order pursuant to G.S. 143-215.2 or takes other action.

(c) Neither the decertification of any facility or abandoned site, the renegotiation of any agreement, nor the termination of any agreement pursuant to this subsection shall not affect the rights of any petitioner, other than any parent, subsidiary or other affiliate of the petitioner, found to be in violation of the provisions of subsection (a) of this section. If the Commission decertifies a facility or abandoned site or terminates an assessment or remediation agreement with any party to the agreement pursuant to subsection (a) of this section, the Commission shall use its best efforts to negotiate a substitute agreement with any remaining parties to the agreement.

"**§ 143-215.104K. Liability protection.**

(a) A potentially responsible party who enters into a Dry-Cleaning Solvent Assessment or Remediation Agreement with the Commission and who is complying with the agreement shall not be held liable for assessment or remediation of areas of

contamination identified in the agreement except as specified in the assessment or remediation agreement, so long as the activities conducted at the contamination site by and under the control or direction of the petitioner do not increase the risk of harm to public health or the environment and the petitioner is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as the petitioner, so long as these persons are not otherwise potentially responsible parties or parent, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section:

(1) Any person under the direction or control of the requesting person who directs or contracts for remediation or redevelopment of the contamination site.

(2) Any future owner of the contamination site.

(3) A person who develops or occupies the contamination site.

(4) A successor or assign of any person to whom the liability protection provided under this Part applies.

(5) Any lender or fiduciary that provides financing for remediation or redevelopment of the contamination site.

(b) A person who conducts an environmental assessment or transaction screen on contamination resulting from a release at a certified facility or certified abandoned site consistent contamination resulting from a release at a certified facility or certified abandoned site consistent with the Dry-Cleaning Solvent Assessment Agreement, if any was required under this Part, and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health, or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) If a land-use restriction set out in the Dry-Cleaning Solvent Remediation Notice required under G.S. 143-215.104M is violated, the owner of the contamination site at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the contamination site in violation of a land-use restriction shall be liable for remediation of all contaminants to current standards. A petitioner who completes the remediation or redevelopment required under a Dry-Cleaning Solvent Remediation Agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation unless any of the following apply:

(1) The petitioner knowingly or recklessly provides false information that forms a basis for the remediation agreement or that is offered to demonstrate compliance with the agreement or fails to disclose relevant information about contamination related to a facility or abandoned site.

(2) New information indicates the existence of previously unreported dry-cleaning solvent contaminants or any other contaminants to be

remediated under the remediation agreement, or an area of previously unreported contamination by contaminants addressed in the agreement on or associated with the facility or abandoned site which has not been remediated to current standards, unless the agreement is amended to include any previously unreported contaminants and any additional area of contamination. If the agreement sets maximum concentrations for contaminants and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the agreement.

(3) The level of risk to public health and the environment from contaminants is unacceptable at or in the vicinity of the contamination site due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the contamination site or (ii) the failure of remediation to mitigate risks to the extent required to make the contamination site fully protective of public health and the environment as planned in the agreement.

(4) The Commission obtains new information about a contaminant to be remediated under the remediation agreement and associated with the facility or abandoned site or exposures at or around the contamination site that raises the risk to public health and the environment associated with the contamination site beyond an acceptable range and in a manner or to a degree not anticipated in the agreement. Any person whose use, including any change in use, of the contamination site causes an unacceptable risk to public health and the environment may be required by the Commission to undertake additional remediation measures under the provisions of this Part.

(5) A petitioner fails to file a timely and proper Dry-Cleaning Solvent Remediation Notice under this Part.

(6) A facility or abandoned site loses its certification before the assessment and any remediation required under the provisions of this Part and the Dry-Cleaning Solvent Remediation Agreement are completed to the satisfaction of the Department.

(7) The remediation required in the remediation agreement has resulted in notification from the United States or its departments and agencies, including the Environmental Protection Agency, that the Department will violate the terms and conditions under which it operates and administers remedial programs by delegation or similar authorization.

"**§ 143-215.104L. Public notice and community involvement.**

(a) If a petitioner desires to enter into a Dry-Cleaning Solvent Remediation Agreement based on remediation standards that rely on the creation of land-use restriction, the petitioner shall notify the public and the community in which the facility or abandoned site is located of planned remediation and redevelopment activities. The petitioner shall submit Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site and a summary of the Notice of Intent to the Commission. The Notice of Intent shall provide, to the extent known, a legal description of the location of the contamination site, a map showing the location of the contamination site, a description of the contaminants involved and their concentrations in the media of the contamination site, a description of the future use of the contamination site, any proposed investigation and remediation, and a proposed Dry-Cleaning Solvent Remediation Notice prepared in accordance with G.S. 143-215.104M. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed Dry-Cleaning Solvent Remediation Agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Commission, the petitioner shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the contamination site. The petitioner shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the contamination is located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register. The petitioner shall also conspicuously post a copy of the summary of the Notice of Intent at the contamination site.

(b) Publication of the approved summary of the Notice of Intent in the North Carolina Register and publication in a newspaper of general circulation shall begin a public comment period of at least 60 days from the later date of publication. During the public comment period, members of the public, residents of the community in which the contamination site is located, and local governments having jurisdiction over the contamination site may submit comment on the proposed Dry-Cleaning Solvent Remediation Agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed Dry-Cleaning Solvent Remediation Agreement shall submit a written request for a public meeting to the Commission within 30 days after the public comment period begins. The Commission shall consider all requests for a public meeting and shall hold a public meeting if the Commission determines that there is significant public interest in the proposed agreement. If the Commission decides to hold a public meeting, the Commission shall, at least 30 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Commission shall also direct the petitioner to publish, at least 30 days prior to the date of the public meeting, a notice

of the public meeting at least one time in a newspaper having general circulation in such county where the contamination site is located. In any county in which there is more than one newspaper having general circulation, the Commission shall direct the petitioner to publish a copy of the notice in as many newspapers having general circulation in the county as the Commission in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Commission shall prescribe the form and content of the notice to be published. The Commission shall prescribe the procedures to be followed in the public meeting. The Commission shall take detailed minutes of the meeting. The minutes shall include any written Dry-Cleaning Solvent Remediation Agreement, the Commission shall take into account the comment received during the comment period and at the public meeting if the Commission holds a public meeting. The Commission shall incorporate into the agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Commission shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis.

"§ 143-215.104M. Dry-Cleaning Solvent Remediation Notice; land-use restrictions in deeds.

(a) Land-Use Restriction. -- In order to reduce or eliminate the danger to public health or the environment posed by a dry-cleaning solvent contamination site, the owner of property upon which dry-cleaning solvent contamination has been discovered may prepare a Dry-Cleaning Solvent Remediation Notice identifying the site on which the contamination has been discovered and providing for current or future restrictions on the use of the property. If a petitioner requests that a contamination site be remediated to standards which require land-use restrictions, the petitioner must file a Dry-Cleaning Solvent Remediation Notice for the remediation agreement to become effective.

(b) Notice of Restriction. -- A Dry-Cleaning Solvent Remediation Notice shall include:

(1) A survey plat of the contamination site that has been prepared and certified by a professional land surveyor and that meets the requirements of G.S. 47-30.

(2) A legal description of the property that would be sufficient as a description in an instrument of conveyance.

(3) A description of the location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(4) The type, location, and quantity of dry-cleaning solvent known to exist on the property.

(5) Any restrictions on the current or future use of the property or other property that are necessary to assure adequate protection of public health and the environment as provided in rules adopted pursuant to G.S. 143-215.104D(b)(3). These land-use restrictions may apply to activities on, over, or under the land, including, but

not limited to, use of groundwater, building, filling, grading, excavating, and mining. Where a contamination site encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded.

(c) Recordation of Notice. -- After the Commission approves and certifies the Dry-Cleaning Solvent Remediation Notice under subsection (a) of this section, a certified copy of a Dry-Cleaning Solvent Remediation Notice shall be filed in the office of the register of deeds of the county or counties in which the property described is located. The petitioner shall file the Dry-Cleaning Solvent Remediation Notice within 15 days of the petitioner's receipt of the Commission's approval of the notice or the petitioner's entry into the Dry-Cleaning Solvent Remediation Agreement, whichever is later. The register of deeds shall record the certified copy of the Dry-Cleaning Solvent Remediation Notice and index it in the grantor index under the names of the owners of the land.

(d) Notice of Transfer. -- When property for which a Dry-Cleaning Solvent Remediation Notice has been filed is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been contaminated with dry-cleaning solvent and, if appropriate, cleaned up under this Part.

(e) Cancellation of Notice. -- A Dry-Cleaning Solvent Remediation Notice filed pursuant to this Part may, at the request of the owner of the property subject to the Dry-Cleaning Solvent Remediation Notice, be canceled by the Secretary after the risk to public health and the environment associated with the dry-cleaning solvent contamination and any other contaminants included in the Dry-Cleaning Solvent Remediation Agreement has been eliminated as a result of remediation of the property. The Secretary shall forward notice of cancellation to the register of deeds of the county or counties where the Dry-Cleaning Solvent Remediation Notice is recorded and request that the Dry-Cleaning Solvent Remediation Notice be canceled. The notice of cancellation shall contain the names of the landowners as shown in the Dry-Cleaning Solvent Remediation Notice. The register of deeds shall record the notice of cancellation in the deed books and index it on the grantor index in the name of the landowner as shown in the Dry-Cleaning Solvent Remediation Notice and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Dry-Cleaning Solvent Remediation Notice showing the date of cancellation and the book and page where the notice of cancellation is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(f) Enforcement. -- Any restriction on the current or future use of property subject to a Dry-Cleaning Solvent Remediation Notice filed pursuant to this section shall be enforced by any owner of the property or by any other responsible party. Any land-use restriction may also be enforced by the Commission through the remedies provided in this Part or by means of a civil action in the superior court. The

Commission may enforce any land-use restriction without first having exhausted any available administrative remedies. Restrictions also may be enforced by any unit of local government having jurisdiction over any part of the property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of privity of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(g) Relation to Brownfields Notice. -- Unless the Commission decertifies a previously certified facility or a previously certified abandoned site, this section shall apply in lieu of the provisions of Article 9 of Chapter 130A of the General Statutes and Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes for properties remediated under this Part.

"§ 143-215.104N. Reimbursement of dry-cleaning solvent assessment and remediation costs; limitations; collection of reimbursement.

(a) Reimbursement. -- To the extent monies are available in the Fund for reimbursement of response costs, the Commission shall reimburse any person responsible for implementing assessment and remediation activities at a contamination site associated with a certified facility or a certified abandoned site pursuant to a Dry-Cleaning Solvent Assessment or Remediation Agreement for the following assessment and remediation response costs:

(1) Costs of assessment with respect to dry-cleaning solvent contamination.

(2) Costs of treatment or replacement of potable water supplies affected by the contamination.

(3) Costs of remediation of affected soil, groundwater, and surface waters.

(4) Monitoring of the contamination.

(5) Inspection and supervision of activities described in this subsection.

(6) Reasonable costs of restoring property as nearly as practicable to the conditions that existed prior to activities associated with assessment and remediation conducted pursuant to this Part.

(7) Other activities reasonably required to protect public health and the environment.

(b) Limitations. -- Notwithstanding subsection (a) of this section, the Commission shall not make any disbursement from the Fund:

(1) For costs incurred in connection with facilities or abandoned sites not certified pursuant to G.S. 143-215.104G.

(2) For costs not incurred pursuant to a Dry-Cleaning Solvent Assessment Agreement or a Dry-Cleaning Solvent Remediation Agreement.

(3) For costs before funds available through the financial responsibility demonstrated by the owner or operator of the facility or abandoned site pursuant to G.S. 143-215.104E and funds obligated by potentially responsible persons pursuant to a Dry-Cleaning Solvent Assessment or Remediation Agreement in accordance with G.S. 143-215.104F(f) are exhausted.

(4) For costs at a contamination site that has been identified by the United States Environmental Protection Agency as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300, except that the Commission may authorize distribution of the required State matchup to two hundred thousand dollars ($200,000) per year per site. The Commission shall not delegate its authority to disburse funds pursuant to this subdivision.

(5) For remediation beyond the level required under the Commission's risk-based criteria for determining the appropriate level of remediation and the remediations agreement.

(6) For assessment or remediation response costs incurred in connection with any individual dry-cleaning solvent assessment or remediation agreement in excess of two hundred thousand dollars ($200,000) per year; provided, however, that the Commission may disburse up to four hundred thousand dollars ($400,000) per year for assessment and remediation costs incurred in connection with a certified facility or a certified abandoned site that poses an imminent hazard.

(7) That would result in a diminution of the Fund balance below one hundred thousand dollars ($100,000), unless an emergency exists in connection with a dry-cleaning solvent contamination abandoned site that constitutes an imminent hazard.

(8) For any costs incurred in connection with dry-cleaning solvent contamination from a facility located on a United State military base or owned by the United States or a department or agency of the United States.

(9) For any costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site owned by the State or a department or agency of the State.

The Commission shall not pay or reimburse any response costs arising from a dry-cleaning solvent assessment or remediation agreement until the petitioners who are party to the agreement have exhausted the financial resources made available under the agreement pursuant to G.S. 143-215.104E and G.S. 143-215.104F.

(c) All dry-cleaning solvent assessment or remediation agreements made by the Commission pursuant to this Part shall expressly state that the Commission's obligation to reimburse response costs incurred pursuant to such agreements shall be contingent upon the availability of monies from the Fund and that the State and its departments and agencies have no obligation to reimburse otherwise eligible expenses

if monies are not available in the Fund to pay the reimbursements. If, at any time, the Commission determines that the cost of assessment and remediation activities reimbursable pursuant to existing dry-cleaning solvent assessment or remediation agreements equals or exceeds the total revenues expected to be credited to the Fund over the life of the Fund, the Commission shall publish notice of the determination in the North Carolina Register. Following the publication of a notice pursuant to this Section, the Commission may continue to enter into dry-cleaning solvent assessment or remediation agreements until the day of adjournment of the first regular session of the General Assembly that begins after the date the notice is published, but shall have no authority to enter into additional dry-cleaning solvent assessment or remediation agreements after that date unless the Commission first determines either (i) that revenues will be available from the Fund to reimburse the costs of assessment and remediation activities expected to be reimbursable pursuant to the agreement, or (ii) that assessment and remediation activities undertaken pursuant to the agreement will be paid entirely from sources other than the Fund. For the purposes of this subsection, the term 'day of adjournment' shall mean: (i) in the case of a regular session held in an odd-numbered year, the day the General Assembly adjourns by joint resolution for more than 10 days, and (ii) in the case of a regular session held in an even-numbered year, the day the General Assembly adjourns sine die.

(d) The Commission shall reimburse the response costs of eligible parties as they are incurred. If the cleanup of the contamination site is not completed as required by the agreement, any response costs previously reimbursed for the cleanup shall be repaid to the Fund, with interest. The Commission shall request the Attorney General to commence a civil action to secure repayment of such response costs and interest of the costs.

"**§ 143-215.104O. Remediation of uncertified sites.**

(a) In the event the owner or operator of a dry-cleaning facility or wholesale distribution facility or the current owner of an abandoned dry-cleaning facility site cannot be identified or located, unreasonably refuses to enter into either an assessment or remediation agreement or cannot be made to comply with the provisions of the remediation agreement between the petitioner and the Commission, the Commission may direct the Department or a private contractor engaged by the Commission to use staff, equipment, or materials under the control of the Department or contractor or provided by other cooperating federal, State, or local agencies to develop and implement a plan for abatement of an imminent hazard, or to provide interim alternative sources of drinking water to third parties affected by dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, wholesale distribution facility, or abandoned dry-cleaning facility site. The cost of any of these actions shall be paid from the Fund. The Department or private contractor shall keep a record of all expenses incurred for personnel and for the use of equipment and materials and all other expenses of developing and implementing the remediation plan.

(b) The Commission shall request the Attorney General to commence a civil action to secure reimbursement of costs incurred under this subsection.

(c) In the event a civil action is commenced pursuant to this Part to recover monies paid from the Fund, the Commission may recover, in addition to any amount due, the costs of the action, including reasonable attorneys' fees and investigation expenses. Any moneys received or recovered as reimbursement shall be paid into the Fund or other source from which the expenditures were made.

"**§ 143-215.104P Enforcement procedures; civil penalties.**

(a) Unless the violation involves a hazardous waste as defined in G.S. 130A-290, a civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Secretary against any person who:

(1) Fails to establish financial responsibility for a dry-cleaning facility or a wholesale distribution facility as required by this Part.

(2) Engages in dry-cleaning operations using dry-cleaning solvent for which the appropriate sales or use tax has not been paid.

(3) Fails to comply with rules adopted by the Commission pursuant to this Part.

(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Part.

(5) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

(6) Falsifies or tampers with any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.

(7) Knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.

(8) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Part or rule implementing this Part.

(9) Knowingly makes a false statement of material fact in a rule-making proceeding or contested case under this Part.

(10) Refuses access to the Commission or its duly designated representative to any premises for purposes of conducting a lawful inspection provided for in this Part or rule implementing this Part.

(11) Fails to comply with the terms and conditions established in the Dry-Cleaning Solvent Assessment or Remediation Agreement.

If the violation involves a hazardous waste as defined in G.S. 130-290, the penalty shall not exceed twenty-five thousand dollars ($25,000) per day.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars ($10,000) per day for so long as the violation continues. A penalty for a continuous violation shall not exceed two hundred thousand dollars ($200,000) for each period of 30 days during which the violation continues. If the violation involves

a hazardous waste as defined in G.S. 130-290, the penalty shall not exceed twenty-five thousand dollars ($25,000) per day.

(c) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty for the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make the final decision regarding assessment of a civil penalty under this section.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver the remission request and the recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located in order to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section or requests remission of the assessment in whole or in part as provided in subsection (e) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

"**§ 143-215.104Q. Enforcement procedures; criminal penalties.**

(a) Any person who negligently commits any of the offenses set out in subdivisions (1) through (12) of G.S. 143-215.104P(a) shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues.

(b) Any person who knowingly and willfully commits any of the offenses set out in subdivisions (1) through (12) of G.S. 143-215.104P(a) shall be guilty of a Class I

felony, which may include a fine not to exceed one hundred thousand dollars ($100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars ($500,000) for each period of 30 days during which the violation continues. For the purposes of this subsection, the phrase 'knowingly and willfully' shall mean 'intentionally and consciously' as the courts of this State, according to the principles of common law, interpret the phrase in the light of reason and experience.

(c) (1) Any person who knowingly commits any of the offenses set out in subdivisions (4) through (12) of G.S. 143-215.104P(a) and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class C felony, which may include a fine not to exceed two hundred fifty thousand dollars ($250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars ($1,000,000) for each period of 30 days during which the violation continues.

(2) For the purposes of this subsection, a person's state of mind is knowing with respect to:

a. His conduct, if he is aware of the nature of his conduct.

b. An existing circumstance, if he is aware or believes that the circumstance exists.

c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(3) Under this subsection, the following should be considered in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:

a. The person is responsible only for actual awareness or actual belief that he possessed, and

b. knowledge possessed by a person other that the defendant but not by the defendant himself may not be attributed to the defendant.

(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business or profession, or of medical treatment or medical or scientific experimentation conducted by professionally approved methods, and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(d) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(e) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(f) For the purposes of the felony provisions of this section, a person's state of mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

(1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.

(2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.

(3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.

(4) An act causing no significant harm to the environment or risk to public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.

(5) Violations causing no significant harm to the environment or risk to public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(6) Occasional, inadvertent, short-term violations causing no significant harm to the environment or risk to public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(g) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under law may apply to presecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in light of reason and experience.

(h) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under law may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they maybe applied in light of reason and experience. Concepts of justification and excuse applicable under this section maybe developed in light of reason and experience.

(h) For purposes of this section, the term 'person" shall mean, in addition to the definition contained in G.S. 143-212, any responsible corporate or public office or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying out said intent and purpose into effect,then, and only then, this section shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or other political subdivision.

"§ 143-215.104R. Enforcement procedures; injunctive relief.

Whenever the Commission has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part or rule implementing this Part, the Commission may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Commission for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part or the rules of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any part to such proceedings from any penalty prescribed for violation of this Part. In the event a civil action is commenced pursuant to this section, the Commission may recover the costs of the action, including attorneys' fees and investigation expenses. All monies received or recovered shall be paid into the Fund or other source from which the expenditures were made.

"§ 143-215.104S. Appeals.

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104F through G.S. 143-215.104O may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated within the allotted time period, the Commission's decision shall be final and not subject to review. The Commission shall make the final agency decision in contested cases initiated pursuant to this section. The Commission shall not delegate its authority to make a final agency decision pursuant to this section.

"**§ 143-215.104T. Construction of the Part.**

(a) This Part is not intended to and shall not be construed to:

(1) Affect the ability of local governments to regulate land use under Article 19 of Chapter 160A of the General Statutes and Article 18 of Chapter 153A of the General Statutes. The use of the identified contamination site and any land-use restrictions in the Dry-Cleaning Solvent Remediation Agreement shall be consistent with local land-use controls adopted under those statutes.

(2) Amend, modify, repeal, or otherwise alter any provision of any use remedial program or other provision of law relating to civil and criminal penalties or enforcement actions and remedies available to the Department, except as may be provided in a Dry-Cleaning Solvent Remediation Agreement.

(3) Prevent or impede the immediate response of the Department or responsible party to an emergency that involves an imminent or actual release of a regulated substance that threatens public health or the environment.

(4) Relieve a person receiving liability protection under this Part from any liability for contamination later caused by that person at a facility or abandoned site.

(5) Affect the right of any person to seek any relief available against any party to the Dry-Cleaning Solvent Remediation Agreement who may have liability with respect to the facility or abandoned site, except that this Part does limit the relief available against any party to an agreement with respect to remediation of the contamination site to the remediation required under the agreement.

(6) Affect the right of any person who may have liability with respect to the facility or abandoned site to seek contribution from any other person who may have liability with respect to the facility or abandoned site and who neither received nor has liability protection under this Part.

(7) Prevent the State from enforcing specific numerical remediation standards, monitoring, or compliance requirements specifically required to be enforced by the federal government as condition to receive program authorization, delegation, primacy or federal funds.

(8) Create a defense against the imposition of criminal and civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or from the pollution of the land, air, or waters of this State on facility or abandoned site.

(9) Relieve a person of any liability for failure to exercise due diligence and reasonable care in performing an environmental assessment or transaction screen.

(b) Notwithstanding the provision of the Tort Claims Act, G.S. 143-291 through G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the State of North Carolina, the State, its agencies, officers, employees, and agents shall be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering, monitoring, or enforcing a Dry-Cleaning Solvent Remediation Agreement or a Dry-Cleaning Solvent Remediation Notice under this Part or any other action implementing this Part.

"**§ 143-215.104U. Reporting requirements.**

(a) The Secretary shall present an annual report to the Environmental Review Commission which shall include at least the following:

(1) A list of all dry-cleaning solvent contamination reported to the Department.

(2) A list of all dry-cleaning facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities, certified by the Commission, and the status of contamination associated with each such facility or abandoned site.

(3) An estimate of the cost of assessment and remediation required in connection with facilities or abandoned sites certified by the Commission and an estimate of such assessment and remediation costs expected to be paid from the Fund.

(4) A statement of receipts and disbursements for the Fund.

(5) A statement of all claims against the Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other obligations.

(6) The adequacy of the Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Fund.

(b) The Secretary shall make the annual report required by this section on or before 1 October of each year."

Section 2. (a) G.S. 143B-282(a)(1)t. reads as rewritten:

"t. To have jurisdiction and supervision over oil pollution and dry-cleaning solvent use, contamination, and remediation pursuant to Article 21A of Chapter 143."

(b) G.S. 143B-282(a)(2) is amended by the addition of a new sub-subdivision to read:

"j. To implement the provisions of Part 6 of Chapter 143."

Section 3. G.S. 58-2-40 is amended by adding a new subdivision to read:

"(9) Adopt rules governing what shall constitute an uninsurable facility for the purposes of G.S. 143-215.104E(b). The rules shall base the determination of uninsurability on the availability of pollution and remediation legal liability insurance at an annual premium amount

that is affordable and proportionate to premium amounts charged for coverage of facilities at which dry-cleaning solvent contamination is not known to be present, but in no event greater than three times the average premium amount for such facilities."

Section 4. Subchapter I of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5D.

"Dry-Cleaning Solvent Tax.

"§ 105-187.30. Definitions.

The definitions in G.S. 105-164.3 apply to this Article and the following definitions apply to this Article:

(1) Dry-Cleaning facility. -- Defined in G.S. 143-215.104B

(2) Dry-Cleaning solvent. -- Defined in G.S. 143-215.104B.

"§ 105-187.31. Tax imposed.

A Privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or consumption by a dry-cleaning facility in this State. The rate of the privilege tax and the excise tax is five dollars and eighty-five cents ($5.85) for each gallon of dry-cleaning solvent that is chlorine-based and eighty cents (80¢) for each gallon of dry-cleaning solvent that is hydrocarbon-based. These taxes are in addition to all other taxes.

"§ 105-187.32. Administration.

The privilege tax this Article imposes on a dry-cleaning solvent retailer is an additional State sales tax, and the excise tax this Article imposes on the storage, use, or consumption of dry-cleaning solvent by a dry-cleaning facility in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when dry-cleaning solvent is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same dry-cleaning solvent.

"§ 105-187.33. Exemptions and refunds.

The exemptions in G.S. 105-164.13 do not apply to the taxes imposed by this Article. The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article.

"§ 105-187.34. Use of tax proceeds.

The Secretary must credit the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, to the Dry-Cleaning Solvent Cleanup Fund. The Secretary may retain the Department's cost of collection, not to exceed one hundred twenty-five thousand dollars ($125,000) a year, as reimbursement to the Department."

Section 5. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act.

Section 6. (a) The statutes in Sections 1 and 4 of this act become effective on the date specified in the following table:

Statute	Effective Date
143-215.104A	When this act becomes law
143-215.104B	When this act becomes law
143-215.104C	When this act becomes law
143-215.104D	When this act becomes law
143-215.104E	1 April 1998
143-215.104F	1 January 1999
143-215.104G	1 January 1999
143-215.104H	1 January 1999
143-215.104I	1 January 1999
143-215.104J	1 January 1999
143-215.104K	1 January 1999
143-215.104L	1 January 1999
143-215.104M	1 January 1999
143-215.104N	1 January 1999
143-215.104O	1 January 1999
143-215.104P	1 January 1998
143-215.104Q	1 January 1998
143-215.104R	1 January 1998
143-215.104S	1 January 1998
143-215.104T	1 January 1998
143-215.104U	1 January 1998
105-187.30	1 October 1997
105-187.31	1 October 1997
105-187.32	1 October 1997
105-187.33	1 October 1997
105-187.34	1 October 1997

Sections 2 and 3 of this act become effective 1 October 1997.

(b) The Secretary of Environment, Health, and Natural Resources shall make the first annual report required under G.S. 143-215.104U on or before 1 October 1998.

(c) The Environmental Management Commission shall adopt rules and develop forms, strategies, and other procedures required or authorized by subdivisions (1) and (3) of G.S. 143-215.104D(b) on or before 1 January 2000.

Section 7. (a) Any person who undertakes assessment or remediation of dry-cleaning solvent contamination pursuant to an enforcement action by the Department of Environment, Health, and Natural Resources during the period beginning 1 October 1997 and 1 January 1999 may, on or after 1 January 1999 seek reimbursement from the Dry-Cleaning Solvent Clean-Up Fund for any such costs

exceeding fifty thousand dollars ($50,000). The Commission shall pay such reimbursement if it finds that the costs incurred were (i) reasonably necessary to assess or remediate the dry-cleaning solvent contamination; (ii) for any of the activities described in G.S. 143-215.104N(a)(1) through (7); (iii) not subject to any of the limitations in G.S. 143-215.104N(b)(2), (4), or (5); and (iv) not reimbursable from pollution and remediation legal liability insurance: Provided, however, that no reimbursement may be paid pursuant to this section for dry-cleaning solvent contamination that did not result from operations at a dry-cleaning or wholesale distribution facility.

(b) Any person who, as of 1 January 1999 is undertaking assessment or remediation of dry-cleaning solvent contamination shall be eligible to petition the Commission to enter into a dry-cleaning solvent assessment or remediation agreement with respect to the contamination. In calculating the required financial contribution of parties to such an agreement, the Commission shall determine the cost of any unreimbursed assessment or remediation activity undertaken by the parties with respect to the contamination site prior to 1 January 1999 and shall credit such amount toward any applicable financial responsibility limits established in G.S. 143-215.104F.

Section 8. Section 7 of this act is repealed effective 1 January 2000; provided, however, that any reimbursement authorized pursuant to that section prior to 1 January 2000 shall be paid in accordance with the provisions of that section. Section 4 of this act is repealed effective 1 January 2010. Section 1 of this act is repealed effective 1 January 2012; provided, however, that G.S. 143-215.104K is not repealed to the extent that it applies to liability arising from dry-cleaning solvent contamination described in dry-cleaning assessment or remediation agreements entered into by the Environmental Management Commission pursuant to G.S. 143-215.104H and G.S. 143-215.104I; and provided further that any such agreements in force as of 1 January 2012 shall continue to be subject to the requirements of the statutes in Section 1 of this act; and provided further that the Commission shall continue to be authorized to adopt rules described in G.S. 143-215.104D(b)(2) and to enforce the rules in accordance with the provisions of G.S. 143-215.104P, 143-215.104Q, and 143-215.104R.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 225 (House Finance Committee Sub)

SHORT TITLE: Dry-Cleaning Solvent Cleanup Act

SPONSOR(S): Representative Weatherly

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Dry-Cleaning Solvent Cleanup Fund					
(1)Solvent Privilege Tax	$1,181,304	$1,491,350	$1,413,489	$1,341,077	$1,273,735
(2)Interest, Gifts, Grants	NA	NA	NA	NA	NA
TOTAL	$1,181,304	$1,491,350	$1,413,489	$1,341,077	$1,273,735
EXPENDITURES					
Dry-Cleaning Solvent Cleanup Fund					
Transfer to:					
Department of Revenue	(125,000)	(125,000)	(125,000)	(125,000)	(125,000)
DEHNR & Justice	(211,261)	(273,270)	(257,698)	(243,215)	(229,747)
NET DEPOSIT TO FUND	$845,043	$1,093,080	$1,030,791	$972,862	$918,988
POSITIONS: Revenue	2	3	3	3	3
DEHNR	**see ASSUMPTIONS AND METHODOLOGY**				
Justice	**see ASSUMPTIONS AND METHODOLOGY**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment Health and Natural Resources (DEHNR), Environmental Management Commission, Department of Revenue/Sales Tax Division, Commissioner of Insurance, Department of Justice

EFFECTIVE DATE: The sections of the bill establishing the Dry-Cleaning Solvent Cleanup Fund and the powers of the Environmental Management Commission over this fund are effective when the act becomes law. The new dry-cleaning solvent tax is effective October 1, 1997 and is repealed on January 1, 2010. The enforcement procedures and penalties are effective January 1, 1998. The requirement of financial responsibility for dry-cleaning facilities is effective on April 1, 1998. The provisions on certification, land-use restrictions, assessment and remediation agreements, appeals, risk assessment, and

reporting requirements to the Environmental Review Commission begin January 1, 1999. This act is repealed January 1, 2012.

BILL SUMMARY: The bill creates a Dry-Cleaning Solvent Cleanup Fund to reimburse persons who cleanup sites polluted with dry-cleaning solvents. The Fund will be administered by the Department of Environment, Health and Natural Resources (DEHNR). The rules governing the Fund will be developed by the Environmental Management Commission. The source of revenue for the new Dry-Cleaning Solvent Cleanup Fund is a dry-cleaning solvent tax. The solvent tax is a per gallon privilege tax equal to $5.85 per gallon of chlorine based solvents (perchloroethylene) and 80 cents per gallon of hydrocarbon or petroleum based solvents.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

A privilege tax is imposed on a dry-cleaning solvent retailer for each gallon of dry-cleaning solvent it sells to a dry-cleaning facility. If a dry-cleaning facility purchases the solvent from an out-of-state supplier, an excise tax is imposed on each gallon purchased. The privilege/excise tax is equal to $5.85 per gallon of chlorine based solvents (perchloroethylene or perc) and 80 cents per gallon of hydrocarbon or petroleum based solvents.

The N. C. Association of Launderers and Cleaners provided information on the gallonage of solvents consumed by cleaners. The Association surveyed 50 plants that use perchloroethylene and 11 plants that use petroleum based products. This sample was used to construct the average number of gallons in the chart below.

Type of Facility	Perchloroethylene Users			Petroleum Users			Total
	Number	Gallons	Tax	Number	Gallons	Tax	
0 to 5 employees	113	250	$165,263	38	1,750	$ 53,200	$ 218,463
6 to 10 employees	138	400	$322,920	46	2,750	$ 101,200	$ 424,120
11+ employees	220	550	$707,850	72	3,900	$224,640	$ 932,490
	471		$1,196,033	156		$379,040	$1,575,073

With an October 1 1997 effective date, the revenue in FY 1997-98 will be 75% of the total shown above or $1,181,304.

There is a debate between the dry cleaning industry and DEHNR officials concerning the level of solvent use in future years. DEHNR estimates that the use of perc will be reduced 7% each year and the use of oil solvents will be reduced 5% each year. For perc, DEHNR cites an EPA study estimating a 20% reduction in perc use from 1994 to 1996. However, the industry argues that the reductions in the last five years due to tougher environmental laws and to new machinery cannot

be sustained in the future. The industry representative for North Carolina estimates solvent use will decline 1% each year for both perc and oil-based solvents.

This fiscal note assumes a 7% reduction in perc use each year and no change in the consumption of oil-based solvents. The Center for Emissions Control reported in Chemical Week magazine (5/4/94) that perc use in dry cleaning dropped 40% from 1986 to 1993. Dr. Joseph DeSimone, Professor of Chemistry and Chemical Engineering at UNC-CH and N. C. State, agrees with DEHNR's estimated 7% annual reduction in perc use. He believes environmental restrictions will force the dry cleaning industry to continue reducing its perc use and eventually find an alternative method of cleaning. With funding from the EPA, the National Science Foundation and eight chemical companies, Dr. DeSimone has developed and will market in 1998 a dry cleaning machine that uses liquid carbon dioxide. This and other technological breakthroughs will continue driving perc use down. As for oil-based solvents, this fiscal note assumes no change in consumption. In fact, a spokesperson for the International Fabricare Institute believes that oil-based solvents may actually increase due to a new product that will soon be on the market that is safer to use.

	1997-98	1998-99	1999-00	2000-01	2001-02
Perc use (gals)	204,450	190,139	176,829	164,451	152,939
Fees	$1,196,033	$1,112,310	$1,034,449	$962,037	$894,695
Petrol use (gals)	473,800	473,800	473,800	473,800	473,800
Fees	$379,040	$379,040	$379,040	$379,040	$379,040
Total Fees	$1,575,073	$1,491,350	$1,413,489	$1,341,077	$1,273,735

EXPENDITURES

The Department of Revenue is allowed to spend up to $125,000 a year to administer this act. The Department has made a preliminary estimate that it will need $115,000 to $120,000 each year to collect the new dry-cleaning solvent tax. It will hire two clerical positions in FY 1997-98 for the Returns Processing and Office Exam sections and in FY 1998-99 it will add an auditor in the Field Operations Unit. This number will be revised downward if it is determined that solvents are sold by a limited number of distributors in the state and not by out of state vendors.

On the other hand, the Department of Environment, Health and Natural Resources (DEHNR) and the Department of Justice will share 20% of the revenue credited to the Dry-Cleaning Solvent Cleanup Fund to administer this program. Based on its experience with the Underground Storage Tank program, DEHNR has requested 10 positions to handle the certifications, inspections, assessments, billing, etc. at an annual cost of $403,401. The Department of Justice has requested an Attorney III and a Paralegal II at an annual cost of $108,706 for the preparation of legal agreements concerning site cleanups. After deducting the $125,000 for the Department of Revenue, DEHNR and Justice will be given only $211,261 in FY 1997-98 or 41.2% of their requested operating budget for this bill. In the following years, the amount budgeted will decline as revenues into the fund decline, but the administrative workload will remain steady.

SOLVENT CLEANUP FUND

Based on the Revenue and Expenditure data presented above, the Dry-Cleaning Solvent Cleanup Fund will receive $10.5 million in revenues from the dry-cleaning solvent tax from 1997 to 2010. However, it is not certain whether this amount will be sufficient to cover all cleanup costs. The dry-cleaning industry projects 69 sites will be cleaned up by the Fund at an average cost of $167,500 per site. Using the industry cost per cleanup, the $10.5 million in the Fund will cover the cleanup of only 63 of the 69 projected sites. This gap is even larger based on data supplied by DEHNR. DEHNR projects cleanup costs to be $300,000 per site and expects 120 contaminated sites will be found over the next 10 years. At $300,000 per site, the Fund will pay for the cleanup of 35 of the 120 sites.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: July 3, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 225*
Committee Substitute Favorable 5/22/97
Committee Substitute #2 Favorable 7/7/97
Proposed Senate Committee Substitute H225-PCS4142

Short Title: Dry-Cleaning Solvent Cleanup Act. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR CLEANUP OF DRY-CLEANING SOLVENT CONTAMINATION IN NORTH CAROLINA, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Whereas, there are dry-cleaning operations in the State at which dry-cleaning solvent contamination has or may have occurred; and

Whereas, many instances of dry-cleaning solvent contamination have resulted from solvent handling practices that were lawful and common at the time such practices were undertaken; and

Whereas, the financial resources of individual dry-cleaning operators are frequently insufficient to assess and remediate dry-cleaning solvent contamination to current environmental standards; and

Whereas, the dry-cleaning industry, through the North Carolina Association of Launderers and Cleaners, has expressed a willingness and desire to work cooperatively and to share financial resources to address dry-cleaning solvent contamination resulting from dry-cleaning facilities; and

Whereas, the level of remediation required for dry-cleaning solvent contamination can be determined using the same risk-assessment techniques that are currently being applied to releases of other regulated substances; and

Whereas, assessment and remediation of dry-cleaning solvent contamination sites in this State can be accelerated through the use of an industry-supported funding mechanism; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Part 6. Dry-Cleaning Solvent Cleanup.

"**§ 143-215.104A. Title.**

This Part is the 'Dry-Cleaning Solvent Cleanup Act of 1997' and may be cited by that name.

"**§ 143-215.104B. Definitions.**

(a) Unless a different meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 143-215.77, 130A-2, and 130A-290 apply throughout this Part.

(b) Unless a different meaning is required by the context, the following definitions apply in this Part. The definitions set out in this subsection apply only to the implementation of this Part and do not define or limit the scope of any other remedial program:

(1) 'Abandoned dry-cleaning facility site' or 'abandoned site' means any real property or individual leasehold space on which a dry-cleaning facility or wholesale distribution facility formerly operated.

(2) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(3) 'Commission' means the Environmental Management Commission.

(4) 'Contaminant' means a regulated substance released into the environment.

(5) 'Current standards' when used in connection with 'cleanup', 'remediated', or 'remediation' means that cleanup or remediation of contamination complies with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the Commission, the Commission for Health Services, or the Department instead of the risk-based standards established by the Commission pursuant to this Part.

(6) 'Disposal' shall have the meaning ascribed to it in G.S. 130A-290.

(7) 'Dry-cleaning facility' means a place of business located in this State and engaged in on-site dry-cleaning operations, other than a commercial uniform service or commercial linen supply facility.

(8) 'Dry-cleaning operations' means cleaning of apparel and household fabrics by using one or more dry-cleaning solvents instead of water.

(9) 'Dry-cleaning solvent' means Perchloroethylene F-1,1,3 or 1,1,1 tricholorethane, a petroleum-based solvent, another comparable

product used as a cleaning agent in a dry-cleaning operation or the degradation products from these hazardous substances.

(10) 'Dry-cleaning solvent assessment agreement' or 'assessment agreement' means an agreement between the Commission and a potentially responsible party who desires to assess whether a release of dry-cleaning solvents at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility may be eligible for remediation under this Part and whether any other contaminants that are identified in the agreement may require remediation under other remedial programs operated or administered by the Department.

(11) 'Dry-cleaning solvent remediation agreement' or 'remediation agreement' means an agreement between the Commission and a potentially responsible party who desires to clean up dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility under this Part and any other contaminants that are identified in the agreement under other remedial programs operated or administered by the Department.

(12) 'Dry-cleaning solvent contamination' means the presence of dry-cleaning solvent in the waters or surface or subsurface soils of the State, the bedrock or other rock formations, or buildings in a concentration above the level requiring remediation pursuant to the rules implementing Article 21A of Chapter 143.

(13) 'Facility' means a dry-cleaning facility or a wholesale distribution facility.

(14) 'Fund' means the Dry-Cleaning Solvent Cleanup Fund.

(15) 'Hazardous waste' shall have the meaning ascribed to it in G.S. 130A-290.

(16) 'Imminent hazard' means a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken.

(17) 'Local government' means a town, city, or county.

(18) 'Operator' means any person operating a dry-cleaning facility or wholesale distribution facility, whether by lease, contract, or any other form of agreement.

(19) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(20) 'Pollution and remediation legal liability insurance' means property and casualty insurance coverage on a claims-made basis for response costs authorized to be reimbursed from the Fund in G.S. 143-215.104N(a).

(21) 'Potentially responsible party' means any person who may have liability for assessment, monitoring, treatment, mitigation, or remediation of dry-cleaning solvent contamination resulting from a release at a dry-cleaning facility, an abandoned dry-cleaning facility site, or a wholesale distribution facility.

(22) 'Public health' means public health as the term is used in Article 9 of Chapter 130A of the General Statutes and 'human health' as the term is used in Articles 21 and 21A of Chapter 143 of the General Statutes.

(23) 'Regulated substance' means a hazardous waste, as defined in G.S. 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program implemented by the Department other than Part 2A of Article 21A of Chapter 143 of the General Statutes.

(24) 'Release' means any spillage, leakage, pumping, placement, emptying, or dumping of dry-cleaning solvents resulting from a dry-cleaning operation or the operation of a wholesale distribution facility.

(25) 'Remedial program' means a program implemented by the Department for the remediation of any contaminant, including the programs implemented under Article 9 of Chapter 130A of the General Statutes and the Oil Pollution and Hazardous Substances Control Act of 1978 under Part 2 of Article 21A of Chapter 143 of the General Statutes but not the remedial program implemented under Part 2A of Article 21A of Chapter 143 of the General Statutes.

(26) 'Remediation' means action to clean up, mitigate, correct, abate, minimize, eliminate, control, or prevent the spreading, migration, leaking, leaching, volatilization, spilling, transporting, or further release of a contaminant into the environment in order to protect public health or the environment.

(27) 'Response costs' means costs incurred in connection with a certified facility or abandoned site that the Commission determines are reasonably necessary and consistent with the applicable requirements of the Commission and any applicable dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement.

(28) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1996 Edition).

(29) 'Treatment' shall have the meaning ascribed to it in G.S. 130A-290.

(30) 'Waters' means any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway, wetlands, or

any other body or accumulation of water, surface or underground, public or private, natural or artificial, that is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction.

(31) 'Wholesale distributor' means a person who operates a wholesale distribution facility.

(32) 'Wholesale distribution facility' means a place of business located in this State and engaged in the storage, distribution, or sale of dry-cleaning solvents for use in dry-cleaning facilities.

"**§ 143-215.104C. Dry-Cleaning Solvent Cleanup Fund.**

(a) Creation. -- The Dry-Cleaning Solvent Cleanup Fund is established as a special revenue fund to be administered by the Commission. Accordingly, revenue in the Fund at the end of a fiscal year does not revert and interest and other investment income earned by the Fund must be credited to it. The Fund is created to provide revenue to implement this Part.

(b) Sources of Revenue. -- The following revenue is credited to the Fund:

(1) Dry-cleaning solvent taxes collected under Article 5D of Chapter 105 of the General Statutes.

(2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-215.104O.

(3) Gifts and grants made to the Fund.

(c) Disbursements. -- A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall pay the claims with the highest priority before claims of lower priority, and claims of equal priority in the order in which the facility or abandoned site was certified until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards caused by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities.

"**§ 143-215.104D. Powers of the Commission.**

(a) Administrative Functions. -- The Commission may delegate any or all of the powers enumerated in this subsection to the Department or engage a private contractor or contractors to carry out the activities enumerated in this subsection. If the Commission engages a private contractor to carry out the functions enumerated

in subdivisions (1) through (6) of this subsection, no action of the contractor shall be effective until ratified by the Commission. The Commission shall:

(1) Accept petitions for certification and petitions to enter into dry-cleaning solvent assessment agreements or remediation agreements under this Part.

(2) Prioritize certified dry-cleaning facilities, certified wholesale distribution facilities, or certified abandoned dry-cleaning facility sites for the initiation of assessment or remediation activities that are reimbursable from the Fund.

(3) Develop forms to be used by persons applying for reimbursement of assessment or remediation costs.

(4) Schedule funding of assessment and remediation activities.

(5) Determine whether assessment or remediation is necessary at a site at which dry-cleaning solvent contamination has occurred.

(6) Determine that all necessary assessment and remediation has been completed at a contamination site.

(7) Make payments from the Fund to reimburse the costs of assessment and remediation. Any payments made by a private contractor engaged by the Commission shall be authorized by the Commission prior to disbursement.

(b) Rule making. -- The Commission shall adopt rules as are necessary to implement the provisions of this Part. Rules adopted by the Commission shall be consistent with and shall not duplicate, but may incorporate by reference, the rules adopted by the Commission for Health Services pursuant to Article 9 of Chapter 130A of the General Statutes. The Commission shall not delegate the rule-making powers provided in this subsection.

(1) The Commission may adopt rules governing:

a. Fees for response costs reimbursable under this Part.

b. The certification and decertification of facilities or abandoned sites.

c. The prioritization of facilities or abandoned sites and scheduling of funding for assessment and remediation activities. These rules shall provide for:

1. Consideration of the degree of harm or risk to public health and the environment.

2. Consideration of the order in which certification is issued for the facility or abandoned site.

3. Consideration of the relative cost of assessment and remediation activities.

4. Use of the Fund so as to maximize the reduction of harm or risk posed by certified facilities, certified abandoned sites, uncertified facilities and uncertified sites.

d. The disbursement of revenue from the Fund for payment or reimbursement of approved assessment or remediation costs.

e. The determination whether assessment or remediation is necessary at a contamination site.

f. The determination that all necessary assessment and remediation has been completed at a contamination site.

g. The terms and conditions of dry-cleaning solvent assessment agreements and remediation agreements.

h. The determination whether additional assessment or remediation is necessary at a contamination site previously closed under this Part.

(2) The Commission may adopt rules establishing minimum management practices for handling of dry-cleaning solvent at dry-cleaning facilities and wholesale distribution facilities. The rules may:

a. Require that all perchloroethylene dry-cleaning machines installed at a dry-cleaning facility after the effective date of the rule or temporary rule meet air emission standards that equal or exceed the standards that apply to comparable dry-to-dry perchloroethylene dry-cleaning machines with integral refrigerated condensation.

b. Prohibit the discharge of dry-cleaning solvents or water that contains dry-cleaning solvents into sanitary sewers, septic systems, storm sewers, or waters of the State.

c. Require spill containment structures around dry-cleaning machines, filters, stills, vapor adsorbers, solvent storage areas, and waste solvent storage areas.

d. Require floor sealants for cleaning room areas if the Commission finds the sealants to be effective.

e. Require, by 1 January 2002, the use of improved solvent transfer systems to prevent releases at the time of delivery of solvents to a dry-cleaning facility.

f. Require any other solvent-handling practices the Commission may find necessary and appropriate to minimize the risk of releases at dry-cleaning facilities or wholesale distribution facilities.

(3) The Commission shall adopt rules establishing a risk-based approach applicable to the assessment, prioritization, and remediation of dry-cleaning solvent contamination resulting from releases at facilities or abandoned sites certified pursuant to G.S. 143-215.104G. The rules shall address, at a minimum:

a. Criteria and methods for determining remediation requirements, including the level of remediation necessary

to assure adequate protection of public health and the environment.

b. The circumstances under which information specific to the dry-cleaning solvent contamination site should be considered and required.

c. The circumstances under which restrictions on the future use of any remediated dry-cleaning solvent contamination site should be considered and required as a means of achieving and maintaining an adequate level of protection for public health and the environment.

d. Strategies for the assessment and remediation of dry-cleaning solvent contamination, including presumptive remedial responses sufficient to provide an adequate level of protection as described under sub-subdivision a. of this subdivision.

(c) All rules adopted by the Commission shall be applicable to all dry-cleaning facilities, wholesale distribution facilities, and abandoned dry-cleaning facilities in the State and shall, to the maximum extent practicable, be cost-effective and technically feasible while protecting public health and the environment from the release of dry-cleaning solvents.

(d) Unless otherwise provided in this Part, the Commission may delegate any of its rights, duties, and responsibilities under this Part to the Department.

"**§ 143-215.104E. Requirement of financial responsibility for dry-cleaning facilities.**

(a) The owner or operator of any dry-cleaning facility or any wholesale distribution facility operating in the State shall establish and continuously maintain financial responsibility for legal liability arising in connection with dry-cleaning solvent contamination resulting from a release at the facility by either:

(1) Obtaining pollution and remediation legal liability insurance for the facility with coverage limits not less than one million dollars ($1,000,000) from an insurance carrier authorized to do business in this State, or

(2) Depositing with the Commission, securities or a third-party bond acceptable to the Commission in an amount not less than one million dollars ($1,000,000).

(b) If the owner or operator of a dry-cleaning facility or any wholesale distribution facility demonstrates to the satisfaction of the Commission an inability to establish financial responsibility consistent with the standards of subsection (a) of this section, then the Commission shall issue a determination of uninsurability to the operator of the facility. When a facility is designated as uninsurable by the Commission, the financial responsibility requirements of subsection (a) of this section are satisfied.

(c) Unless the Commissioner of Insurance adopts rules providing otherwise, a dry-cleaning facility or wholesale distribution facility shall be determined to be uninsurable if the annual premium for coverage of the dry-cleaning facility or wholesale distribution facility meeting the requirements of this Part is more than

three times the average premium for similar coverage for dry-cleaning facilities or wholesale distribution facilities where dry-cleaning solvent contamination is not known to have occurred. Each insurer selling pollution and remediation legal liability insurance in this State shall, on or before 1 March of each year, report to the Commission the number of policies held in force by the company in this State for dry-cleaning facilities and for wholesale distribution facilities and the average premium rate for each type of facility during the preceding calendar year.

(d) Dry-cleaning facilities and abandoned dry-cleaning facility sites located on a United States military base or owned by the United States or a department or agency of the United States and dry-cleaning facilities and abandoned dry-cleaning facility sites owned by the State or an agency or department of the State are exempt from complying with this section.

"§ 143-215.104F. Requirements for certification, assessment agreements, and remediation agreements.

(a) Any person petitioning for certification of a facility or abandoned site pursuant to G.S. 143-215.104G, for a dry-cleaning solvent assessment agreement pursuant to G.S. 143-215.104H, or for a dry-cleaning solvent remediation agreement pursuant to G.S. 143-215.104I, shall meet the requirements set out in this section and any other applicable requirements of this Part.

(b) Requirements for Potentially Responsible Persons Generally. -- Every petitioner shall provide the Commission with:

(1) Information necessary for the Commission to determine the priority ranking of the facility or abandoned site described in the petition.

(2) Information necessary to demonstrate the person's ability to incur the response costs specified in subsection (f) of this section.

(3) Evidence of financial responsibility established in accordance with G.S. 143-104.215E(a) or a copy of a determination of uninsurability issued by the Commission pursuant to G.S. 143-25.104E(b).

(c) Requirement for Property Owners. -- In addition to the information required by subsection (b) of this section, a petitioner who is the owner of the property on which the dry-cleaning solvent contamination identified in the petition is located shall provide the Commission a written agreement authorizing the Commission or its agent to have access to the property for purposes of determining whether assessment or remediation activities are being conducted in compliance with this Part and any assessment agreement or remediation agreement.

(d) The Commission shall reject any petition made pursuant to this Part in any of the following circumstances:

(1) The petitioner is an owner or operator of the facility described in the petition and the facility was not being operated in compliance with minimum management practices adopted by the Commission pursuant to G.S. 143-215.104D(b)(2) at the time the contamination was discovered.

(2) The petitioner is an owner or operator of the facility described in the petition and the petitioner owed delinquent taxes under Article 5D of Chapter 105 of the General Statutes at the time the dry-cleaning solvent contamination was discovered.

(3) The petitioner is an owner or operator of the facility described in the petition and the petitioner had failed, at the time the contamination was discovered, to establish financial responsibility for the facility pursuant to G.S. 143-215.104E(a) or to obtain a determination of uninsurability pursuant to G.S. 143-215.104E(b).

(e) The Commission may reject any petition made pursuant to this Part in any of the following circumstances:

(1) The petitioner fails to provide the information required by subsection (b) of this section.

(2) The petitioner falsified any information in its petition that was material to the determination of the priority ranking, the nature, scope and extent of contamination to be assessed or remediated, or the appropriate means to contain and remediate the contaminants.

(f) Financial Responsibility Requirements. -- Each potentially responsible person who petitions the Commission to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement shall accept written responsibility in the amount specified in this section for the assessment or remediation of the dry-cleaning solvent contamination identified in the petition. If two or more potentially responsible persons petition the Commission jointly, the requirements below shall be the aggregate requirements for the financial responsibility of all potentially responsible persons who are party to the petition. Unless an alternative arrangement is agreed to by co-petitioners, the financial responsibility requirements of this section shall be apportioned equally among the co-petitioners. The requirements in this subsection shall be in addition to any insurance or other financial responsibility, including deductibles or retentions, established pursuant to G.S. 143-215.104E.

Facility or Abandoned Site Where Release Occurred	Costs
Dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year	$5,000
Dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year	$10,000
Dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year	$15,000

Wholesale distribution facilities	$25,000
Abandoned dry-cleaning facility sites	$50,000.

(g) If a dry-cleaning facility is determined to be uninsurable, the financial responsibility requirements for the dry-cleaning facility shall be three times the amount provided above. The financial responsibility requirement for a wholesale distribution facility that is determined to be uninsurable shall be fifty thousand dollars ($50,000).

"**§ 143-215.104G. Certification of facilities and abandoned sites.**

(a) A potentially responsible party may petition the Commission to certify a facility or abandoned site where a release of dry-cleaning solvent is believed to have occurred. The Commission shall certify the facility or abandoned site if the petitioner meets the applicable requirements of G.S. 143-215.104F. Upon its decision to certify a facility or abandoned site, the Commission shall inform the petitioner of its decision and of the initial priority ranking of the facility or site.

(b) The Commission may change the initial priority rankings of any facility or abandoned site as additional facilities or abandoned sites are certified if the Commission, in its sole discretion, determines that additional facilities or sites pose a higher degree of harm or risk to public health and the environment. However, the Commission shall not change the priority ranking of a facility or an abandoned site that is set in a dry-cleaning solvent remediation agreement.

(c) A potentially responsible party who petitions for certification of a facility or abandoned site shall provide the Commission with either of the following:

(1) A proposed dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement or an indication of the petitioner's intent to enter into an assessment agreement or remediation agreement.

(2) A written statement of the petitioner's intent to conduct assessment and remediation activities pursuant to subsection (d) of this section.

(d) A person who has access to property that is contaminated by dry-cleaning solvent and who has successfully petitioned for certification of the facility or abandoned site from which the contamination is believed to have resulted may undertake assessment or remediation of dry-cleaning solvent contamination located on the property consistent with the standards established by the Commission pursuant to G.S. 143-215.104D(b)(3) without first entering into a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement. No assessment or remediation activities undertaken pursuant to this subsection shall rely on standards that require the creation of land-use restrictions. A person who undertakes assessment or remediation activities pursuant to this subsection shall provide the Commission prior written notice of the activity. Costs associated with

assessment or remediation activities undertaken pursuant to this subsection shall not be eligible for reimbursement from the Fund.

(e) The rejection of any petition filed pursuant to this section shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The rejection of a petition or the decertification of a facility or abandoned site may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

"**§ 143-215.104H. Dry-Cleaning Solvent Assessment Agreements.**

(a) Assessment Agreements. -- One or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent assessment agreement regarding a facility or abandoned site that has been certified pursuant to G.S. 143-215.104G. The Commission may, in its discretion, enter into an assessment agreement with any potentially responsible party who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single assessment agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into an assessment agreement pursuant to this section. Petitioners shall provide the Commission with any information necessary to demonstrate that the:

(1) Priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the adjusted priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.

(2) Projected schedule for funding of assessment activities, including reimbursements from the Fund is adequate.

(3) Assessment activities to be undertaken with respect to the dry-cleaning solvent contamination and any other contamination at the contamination site are adequate.

(4) Person who will be responsible for implementation of the activities is capable and qualified to conduct the assessment.

(5) Petitioner has and will continue to have available the financial resources necessary to pay the costs of assessment activities and the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(6) Permits or other authorizations required to conduct the assessment activities and to lawfully dispose of any hazardous substances or wastes generated by the assessment activities have been or can be obtained.

(7) Assessment activities will not increase the existing level of public exposure to health or environmental hazards at the contamination site.

(8) Costs to be incurred in connection with the assessment activities contemplated by the assessment agreement are reasonable and necessary.

(9) Petitioner has obtained the consent of other property owners to enter into their property for the purpose of conducting assessment activities specified in the assessment agreement.

(b) The terms and conditions of an assessment agreement regarding dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. An assessment agreement shall, subject to the availability of monies from the Fund:

(1) Specify the date on which remediation will begin.

(2) Provide for the prompt reimbursement of response costs incurred in assessment activities that are found by the Commission to be consistent with the assessment agreement and this Part.

(c) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement with any petitioner if:

(1) The petitioner will not accept financial responsibility for the share of the response costs required by G.S. 143-215.104F.

(2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking assessment activities required by the Commission.

(3) The petitioner fails to provide any information required by subsection (a) of this section.

(d) The refusal of the Commission to enter into a dry-cleaning solvent assessment agreement with any petitioner shall not affect the rights of any other petitioner under this Part, except that the refusal may be the basis for rejection of a petition by any parent, subsidiary or other affiliate of the petitioner for the facility or abandoned site.

(e) If the Commission determines from an assessment prepared pursuant to this Part that the degree of risk to public health or the environment resulting from dry-cleaning solvent contamination otherwise subject to assessment or remediation under this Part and Article 9 of Chapter 130A is acceptable in light of the criteria established pursuant to G.S. 143-215.104D(b)(3) and Article 9 of Chapter 130A, the Commission shall issue a written statement of its determination and notify the owner or operator of the facility or abandoned site responsible for the contamination that no cleanup, no further cleanup, or no further action is required in connection with the contamination.

(f) If the Commission determines that no remediation or further action is required in connection with dry-cleaning solvent contamination otherwise subject to assessment or remediation pursuant to this Part and Article 9 of Chapter 130A, the Commission shall not pay or reimburse any response costs otherwise payable or reimbursable under this Part from the Fund other than costs reasonable and necessary to conduct the risk assessment pursuant to this section and in compliance with a dry-cleaning solvent assessment agreement.

"**§ 143-215.104I. Dry-Cleaning Solvent Remediation Agreements.**

(a) Upon the completion of assessment activities required by a dry-cleaning solvent assessment agreement, one or more potentially responsible parties may

petition the Commission to enter into a dry-cleaning solvent remediation agreement for any contamination requiring remediation. The Commission may, in its discretion, enter into a remediation agreement with any petitioner who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single remediation agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into a remediation agreement pursuant to this section. The Commission may, in its discretion, enter into a remediation agreement that includes the assessment described in G.S. 143-215.104H. Petitioners shall provide the Commission with any information necessary to demonstrate that:

(1) The petitioner, and any parent, subsidiary, or other affiliate of the petitioner has substantially complied with:

a. The terms of any dry-cleaning solvent assessment agreement, dry-cleaning solvent remediation agreement, brownfields agreement, or other similar agreement to which the petitioner or any parent, subsidiary, or other affiliate of the petitioner has been a party.

b. The requirements applicable to any remediation in which the petitioner has previously engaged.

c. Federal and State laws, regulations, and rules for the protection of the environment.

(2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the remediation agreement while fully protecting public health and the environment from dry-cleaning solvent contamination and any other contaminants included in the remediation agreement.

(3) There is a public benefit commensurate with the liability protection provided under this Part.

(4) The petitioner has or can obtain the financial, managerial, and technical means to fully implement the remediation agreement and assure the safe use of the contamination site.

(5) The petitioner has complied with or will comply with all applicable procedural requirements.

(6) The remediation agreement will not cause the Department to violate the terms and conditions under which the Department operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General Statutes, by delegation or similar authorization from the United States or its departments or agencies, including the United States Environmental Protection Agency.

(7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the adjusted priority

ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.

(8) The projected schedule for funding of remediation activities, including reimbursements from the Fund.

(9) The petitioner will continue to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(10) The expenditures eligible for reimbursement from the Fund and to be incurred in connection with the remediation agreement are reasonable and necessary.

(11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the remediation agreement.

(b) In negotiating a remediation agreement, parties may rely on land-use restrictions that will be included in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M. A remediation agreement may provide for remediation in accordance with standards that are based on those land-use restrictions.

(c) A dry-cleaning solvent remediation agreement shall contain a description of the contamination site that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

(1) Any remediation, including remediation of contaminants other than dry-cleaning solvents, to be conducted on the property, including:

a. A description of specific areas where remediation is to be conducted.

b. The remediation method or methods to be employed.

c. The resources that the petitioner will make available and the degree to which the petitioner intends to rely on the Fund for resources.

d. A schedule of remediation activities.

e. Applicable remediation standards. Applicable remediation standards for dry-cleaning solvent contamination shall not exceed the requirements adopted by the Commission pursuant to G.S. 143-104D(b)(3).

f. A schedule and the method or methods for evaluating the remediation.

(2) Any land-use restrictions that will apply to the contamination site or other property.

(3) The desired results of any remediation or land-use restrictions with respect to the contamination site.

(4) The guidelines, including parameters, principles, and policies within which the desired results are to be accomplished.

(5) The consequences of achieving or not achieving the desired results.

(6) The final priority ranking of the facility or abandoned site.

(7) The person who will conduct the remediation if that person is not the potentially responsible party entering the remediation agreement.

(d) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with any petitioner if:

(1) The petitioner will not accept financial responsibility for the share of the response costs established in G.S. 143-215.104F. This requirement shall not apply to a petitioner who (i) is the owner of property upon which the dry-cleaning solvent contamination is located, and (ii) is not a current or former owner or operator of a facility believed to be responsible for the contamination.

(2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking remediation activities required by the Commission.

(3) The petitioner fails to provide any information that is necessary to demonstrate the facts required to be shown by subsection (a) of this section.

(e) In addition to the bases set forth in subsection (d) of this section, the Commission may refuse to enter into a dry-cleaning solvent remediation agreement with the owner of the property on which a contamination site is located if the owner refuses to accept limitations on the future use of the property and to give notice of these limitations pursuant to G.S. 143-215.104M.

(f) The refusal of the Commission to enter into a dry-cleaning remediation agreement with any petitioner shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The refusal of the Commission to enter into a remediation agreement may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site.

(g) The terms and conditions of a dry-cleaning solvent remediation agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. A remediation agreement shall provide, subject to availability of monies in the Fund, for prompt reimbursement of response costs incurred in assessment activities that are found by the Commission to be consistent with the remediation agreement and this Part.

(h) Any failure of a petitioner or the petitioner's agents or employees to comply with the dry-cleaning solvent remediation agreement constitutes a violation of this Part by the petitioner.

"**§ 143-215.104J. Decertification; termination of assessment agreements and remediation agreements.**

(a) The Commission may decertify a facility or abandoned site or renegotiate or terminate an assessment agreement or remediation agreement with respect to any party thereto in the following circumstances:

(1) The owner or operator of the facility, at any time subsequent to the certification of the facility, violates any of the minimum management requirements adopted by the Commission pursuant to G.S. 143-215.104D(b)(2).

(2) In the case of dry-cleaning contamination on property that is owned by a petitioner, the petitioner fails to file a Notice of Dry-Cleaning Solvent Remediation, if required, as provided in G.S. 143-215.104M.

(3) The potentially responsible persons who are parties to a dry-cleaning solvent assessment agreement are unable to reach an agreement with the Commission to enter into a dry-cleaning solvent remediation agreement within the time specified in the assessment agreement.

(4) The payment of taxes assessed to the facility under Article 5D of Chapter 105 of the General Statutes is delinquent.

(5) The financial responsibility to meet the requirement of G.S. 143-215.104E is not maintained continuously for any facility, unless a determination of uninsurability has been issued for the facility.

(6) The owner or operator fails to comply with all applicable requirements of this Part to complete any assessment or remediation activities required by an assessment agreement or remediation agreement.

(7) The owner or operator of a facility for which an assessment or remediation activity is scheduled or in progress transfers the ownership or operation of the facility or abandoned site to another person without the prior consent of the Commission and the execution of a substitute assessment agreement or remediation agreement.

(8) The standards applied to the dry-cleaning solvent contamination remediation or containment under the provisions of this Part and the dry-cleaning solvent remediation agreement will, or are likely to, cause the Department to fail to comply with the terms and conditions under which it operates and administers a remediation program by delegation or similar authorization from the United States or one of its departments or agencies, including the Environmental Protection Agency.

(b) Prior to decertifying any facility or abandoned site or renegotiating or terminating any assessment agreement or remediation agreement, the Commission shall give the petitioners notice and opportunity for hearing. The Commission is not required to give the petitioners notice and opportunity for hearing when the Commission reasonably takes an emergency action to abate an imminent hazard caused by or arising from assessment or remediation activities at a contamination site whether the Commission issues a special order pursuant to G.S. 143-215.2 or takes other action.

(c) Decertification of any facility or abandoned site or renegotiation or termination of any assessment agreement or remediation agreement pursuant to this section shall not affect the rights of any petitioner, other than a petitioner whose violation of the provisions of subsection (a) of this section was the basis for the decertification, renegotiation, or termination and any parent, subsidiary, or other affiliate of that petitioner. If the Commission decertifies a facility or abandoned site or terminates an assessment agreement or remediation agreement with any party to the agreement pursuant to subsection (a) of this section, the Commission shall use its best efforts to negotiate a substitute agreement with any remaining parties to the agreement.

"**§ 143-215.104K. Liability protection.**

(a) A potentially responsible party who enters into an assessment agreement or remediation agreement with the Commission and who is complying with the agreement shall not be held liable for assessment or remediation of areas of contamination identified in the agreement except as specified in the assessment agreement or remediation agreement, so long as the activities conducted at the contamination site by or under the control or direction of the petitioner do not increase the risk of harm to public health or the environment and the petitioner is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section. The liability protection provided under this Part applies to all of the following persons to the same extent as the petitioner, so long as these persons are not otherwise potentially responsible parties or parents, subsidiaries, or affiliates of potentially responsible parties and the person is not required to undertake additional remediation to current standards pursuant to subsection (c) of this section:

(1) Any person under the direction or control of the petitioner who directs or contracts for assessment, remediation, or redevelopment of the contamination site.

(2) Any future owner of the contamination site.

(3) A person who develops or occupies the contamination site.

(4) A successor or assign of any person to whom the liability protection provided under this Part applies.

(5) Any lender or fiduciary that provides financing for assessment, remediation, or redevelopment of the contamination site.

(b) A person who conducts an environmental assessment or transaction screen on contamination resulting from a release at a certified facility or certified abandoned site consistent with a dry-cleaning solvent assessment agreement, if any was required under this Part, and who is not otherwise a potentially responsible party is not a potentially responsible party as a result of conducting the environmental assessment or transaction screen unless that person increases the risk of harm to public health or the environment by failing to exercise due diligence and reasonable care in performing the environmental assessment or transaction screen.

(c) If a land-use restriction set out in a Notice of Dry-Cleaning Solvent Remediation required under G.S. 143-215.104M is violated, the owner of the

contamination site at the time the land-use restriction is violated, the owner's successors and assigns, and the owner's agents who direct or contract for alteration of the contamination site in violation of a land-use restriction shall be liable for remediation of all contaminants to current standards. A petitioner who completes the remediation or redevelopment required under a dry-cleaning solvent remediation agreement or other person who receives liability protection under this Part shall not be required to undertake additional remediation unless:

(1) The petitioner knowingly or recklessly provides false information that forms a basis for the remediation agreement or that is offered to demonstrate compliance with the remediation agreement or fails to disclose relevant information about contamination related to a facility or abandoned site.

(2) New information indicates the existence of previously unreported dry-cleaning solvent contaminants or any other contaminants to be remediated under the remediation agreement, or an area of previously unreported contamination by contaminants addressed in the remediation agreement is discovered to be associated with the facility or abandoned site and has not been remediated to current standards, unless the remediation agreement is amended to include any previously unreported contaminants and any additional area of contamination. If the remediation agreement sets maximum concentrations for contaminants and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk of the contamination to public health or the environment to a level less protective of public health and the environment than that required by the remediation agreement.

(3) The level of risk to public health and the environment from contaminants is unacceptable at or in the vicinity of the contamination site due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants at or in the vicinity of the contamination site or (ii) the failure of remediation to mitigate risks to the extent required to make the contamination site fully protective of public health and the environment as planned in the remediation agreement.

(4) The Commission obtains new information about a contaminant to be remediated under the remediation agreement and associated with the facility or abandoned site or exposures at or around the contamination site that raises the risk to public health or the environment associated with the contamination site beyond an acceptable range and in a manner or to a degree not anticipated in the remediation agreement. Any person whose use, including any

change in use, of the contamination site causes an unacceptable risk to public health or the environment may be required by the Commission to undertake additional remediation measures under the provisions of this Part.

(5) A petitioner fails to file a timely and proper Notice of Dry-Cleaning Solvent Remediation under this Part.

(6) A facility or abandoned site loses its certification before the assessment and any remediation required under the provisions of this Part and the dry-cleaning solvent remediation agreement are completed to the satisfaction of the Department.

(7) The remediation required in the remediation agreement has resulted in notification from the United States or its departments and agencies, including the Environmental Protection Agency, that the Department will violate the terms and conditions under which it operates and administers remedial programs by delegation or similar authorization.

"**§ 143-215.104L. Public notice and community involvement.**

(a) If a petitioner desires to enter into a dry-cleaning solvent remediation agreement based on remediation standards that rely on the creation of land-use restrictions, the petitioner shall notify the public and the community in which the facility or abandoned site is located of the planned remediation and redevelopment activities. The petitioner shall submit a Notice of Intent to Remediate a Dry-Cleaning Solvent Facility or Abandoned Site and a summary of the Notice of Intent to the Commission. The Notice of Intent shall provide, to the extent known, a legal description of the location of the contamination site, a map showing the location of the contamination site, a description of the contaminants involved and their concentrations in the media of the contamination site, a description of the future use of the contamination site, any proposed investigation and remediation, and a proposed Notice of Dry-Cleaning Solvent Remediation prepared in accordance with G.S. 143-215.104M. Both the Notice of Intent and the summary of the Notice of Intent shall state the time period and means for submitting written comment and for requesting a public meeting on the proposed dry-cleaning solvent remediation agreement. The summary of the Notice of Intent shall include a statement as to the public availability of the full Notice of Intent. After approval of the Notice of Intent and summary of the Notice of Intent by the Commission, the petitioner shall provide a copy of the Notice of Intent to all local governments having jurisdiction over the contamination site. The petitioner shall publish the summary of the Notice of Intent in a newspaper of general circulation serving the area in which the contamination is located and shall file a copy of the summary of the Notice of Intent with the Codifier of Rules, who shall publish the summary of the Notice of Intent in the North Carolina Register. The petitioner shall also conspicuously post a copy of the summary of the Notice of Intent at the contamination site.

(b) Publication of the approved summary of the Notice of Intent in the North Carolina Register and publication in a newspaper of general circulation shall begin a

public comment period of at least 60 days from the later date of publication. During the public comment period, members of the public, residents of the community in which the contamination site is located, and local governments having jurisdiction over the contamination site may submit comment on the proposed dry-cleaning solvent remediation agreement, including methods and degree of remediation, future land uses, and impact on local employment.

(c) Any person who desires a public meeting on a proposed dry-cleaning solvent remediation agreement shall submit a written request for a public meeting to the Commission within 30 days after the public comment period begins. The Commission shall consider all requests for a public meeting and shall hold a public meeting if the Commission determines that there is significant public interest in the proposed remediation agreement. If the Commission decides to hold a public meeting, the Commission shall, at least 30 days prior to the public meeting, mail written notice of the public meeting to all persons who requested the public meeting and to any other person who had previously requested notice. The Commission shall also direct the petitioner to publish, at least 30 days prior to the date of the public meeting, a notice of the public meeting at least one time in a newspaper having general circulation in the county where the contamination site is located. In any county in which there is more than one newspaper having general circulation, the Commission shall direct the petitioner to publish a copy of the notice in as many newspapers having general circulation in the county as the Commission in its discretion determines to be necessary to assure that the notice is generally available throughout the county. The Commission shall prescribe the form and content of the notice to be published. The Commission shall prescribe the procedures to be followed in the public meeting. The Commission shall take detailed minutes of the meeting. The minutes shall include any written dry-cleaning solvent remediation agreement. The Commission shall take into account the comment received during the comment period and at the public meeting if the Commission holds a public meeting. The Commission shall incorporate into the remediation agreement provisions that reflect comment received during the comment period and at the public meeting to the extent practical. The Commission shall give particular consideration to written comment that is supported by valid scientific and technical information and analysis.

"§ 143-215.104M. Notice of Dry-Cleaning Solvent Remediation; land-use restrictions in deeds.

(a) Land-Use Restriction. -- In order to reduce or eliminate the danger to public health or the environment posed by a dry-cleaning solvent contamination site, the owner of property upon which dry-cleaning solvent contamination has been discovered may prepare and submit to the Commission for approval a Notice of Dry-Cleaning Solvent Remediation identifying the site on which the contamination has been discovered and providing for current or future restrictions on the use of the property. If a petitioner requests that a contamination site be remediated to standards that require land-use restrictions, the owner of the property must file a

Notice of Dry-Cleaning Solvent Remediation for the remediation agreement to become effective.

(b) Notice of Restriction. -- A Notice of Dry-Cleaning Solvent Remediation shall include:

(1) A survey plat of the contamination site that has been prepared and certified by a professional land surveyor and that meets the requirements of G.S. 47-30.

(2) A legal description of the property that would be sufficient as a description in an instrument of conveyance.

(3) A description of the location and dimensions of the areas of potential environmental concern with respect to permanently surveyed benchmarks.

(4) The type, location, and quantity of dry-cleaning solvent contamination known to exist on the property.

(5) Any restrictions on the current or future use of the property or other property that are necessary to assure adequate protection of public health and the environment as provided in rules adopted pursuant to G.S. 143-215.104D(b)(3). These land-use restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Where a contamination site encompasses more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded.

(c) Recordation of Notice. -- After the Commission approves and certifies the Notice of Dry-Cleaning Solvent Remediation under subsection (a) of this section, a certified copy of a Notice of Dry-Cleaning Solvent Remediation shall be filed in the office of the register of deeds of the county or counties in which the property described is located. The owner of the property shall file the Notice of Dry-Cleaning Solvent Remediation within 15 days of the property owner's receipt of the Commission's approval of the notice or the effective date of the dry-cleaning solvent remediation agreement, whichever is later. The register of deeds shall record the certified copy of the Notice of Dry-Cleaning Solvent Remediation and index it in the grantor index under the names of the owners of the land.

(d) Notice of Transfer. -- When property for which a Notice of Dry-Cleaning Solvent Remediation has been filed is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the property has been contaminated with dry-cleaning solvent and, if appropriate, cleaned up under this Part.

(e) Cancellation of Notice. -- A Notice of Dry-Cleaning Solvent Remediation filed pursuant to this Part may, at the request of the owner of the property subject to the Notice of Dry-Cleaning Solvent Remediation, be canceled by the Secretary after the risk to public health and the environment associated with the dry-cleaning solvent contamination and any other contaminants included in the dry-cleaning solvent

remediation agreement has been eliminated as a result of remediation of the property. The Secretary shall forward notice of cancellation to the register of deeds of the county or counties where the Notice of Dry-Cleaning Solvent Remediation is recorded and request that the Notice of Dry-Cleaning Solvent Remediation be canceled. The notice of cancellation shall contain the names of the landowners as shown in the Notice of Dry-Cleaning Solvent Remediation. The register of deeds shall record the notice of cancellation in the deed books and index it on the grantor index in the name of the landowner as shown in the Notice of Dry-Cleaning Solvent Remediation and on the grantee index in the name 'Secretary of Environment, Health, and Natural Resources'. The register of deeds shall make a marginal entry on the Notice of Dry-Cleaning Solvent Remediation showing the date of cancellation and the book and page where the notice of cancellation is recorded, and the register of deeds shall sign the entry. If a marginal entry is impracticable because of the method used to record maps and plats, the register of deeds shall not be required to make a marginal entry.

(f) Enforcement. -- Any restriction on the current or future use of property subject to a Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall be enforced by any owner of the property or by any other potentially responsible party. Any land-use restriction may also be enforced by the Commission through the remedies provided in this Part or by means of a civil action in the superior court. The Commission may enforce any land-use restriction without first having exhausted any available administrative remedies. Restrictions also may be enforced by any unit of local government having jurisdiction over any part of the property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of privity of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(g) Relation to Brownfields Notice. -- Unless the Commission decertifies a previously certified facility or a previously certified abandoned site, this section shall apply in lieu of the provisions of Article 9 of Chapter 130A of the General Statutes and Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes for properties remediated under this Part.

"§ 143-215.104N. Reimbursement of dry-cleaning solvent assessment and remediation costs; limitations; collection of reimbursement.

(a) Reimbursement. -- To the extent monies are available in the Fund for reimbursement of response costs, the Commission shall reimburse any person responsible for implementing assessment and remediation activities at a contamination site associated with a certified facility or a certified abandoned site pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement for the following assessment and remediation response costs:

(1) Costs of assessment with respect to dry-cleaning solvent contamination.
(2) Costs of treatment or replacement of potable water supplies affected by the contamination.
(3) Costs of remediation of affected soil, groundwater, surface waters, bedrock or other rock formations, or buildings.
(4) Monitoring of the contamination.
(5) Inspection and supervision of activities described in this subsection.
(6) Reasonable costs of restoring property as nearly as practicable to the conditions that existed prior to activities associated with assessment and remediation conducted pursuant to this Part.
(7) Other activities reasonably required to protect public health and the environment.

(b) Limitations. -- Notwithstanding subsection (a) of this section, the Commission shall not make any disbursement from the Fund:

(1) For costs incurred in connection with facilities or abandoned sites not certified pursuant to G.S. 143-215.104G.
(2) For costs not incurred pursuant to a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement.
(3) For costs before funds available through the financial responsibility demonstrated by the owner or operator of the facility or abandoned site pursuant to G.S. 143-215.104E and funds obligated by petitioners pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement in accordance with G.S. 143-215.104F(f) are exhausted.
(4) For costs at a contamination site that has been identified by the United States Environmental Protection Agency as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition), except that the Commission may authorize distribution of the required State match in an amount not to exceed two hundred thousand dollars ($200,000) per year per site. The Commission shall not delegate its authority to disburse funds pursuant to this subdivision.
(5) For remediation beyond the level required under the Commission's risk-based criteria for determining the appropriate level of remediation.
(6) For assessment or remediation response costs incurred in connection with any individual dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement in excess of two hundred thousand dollars ($200,000) per year. However, that the Commission may disburse up to four hundred thousand dollars ($400,000) per year for assessment and remediation costs

incurred in connection with a certified facility or a certified abandoned site that poses an imminent hazard.

(7) That would result in a diminution of the Fund balance below one hundred thousand dollars ($100,000), unless an emergency exists in connection with a dry-cleaning solvent contamination abandoned site that constitutes an imminent hazard.

(8) For any costs incurred in connection with dry-cleaning solvent contamination from a facility located on a United States military base or owned by the United States or a department or agency of the United States.

(9) For any costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site owned by the State or a department or agency of the State.

(c) Commission shall not pay or reimburse any response costs arising from a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement until the petitioners who are party to the agreement have exhausted the financial resources made available under the agreement pursuant to G.S. 143-215.104E and G.S. 143-215.104F.

(d) Each dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreements made by the Commission pursuant to this Part shall expressly state that the Commission's obligation to reimburse response costs incurred pursuant to these agreements shall be contingent upon the availability of monies from the Fund and that the State and its departments and agencies have no obligation to reimburse otherwise eligible expenses if monies are not available in the Fund to pay the reimbursements. If, at any time, the Commission determines that the cost of assessment and remediation activities reimbursable pursuant to existing dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements equals or exceeds the total revenues expected to be credited to the Fund over the life of the Fund, the Commission shall publish notice of the determination in the North Carolina Register. Following the publication of a notice pursuant to this section, the Commission may continue to enter into dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements until the day of adjournment of the first regular session of the General Assembly that begins after the date the notice is published, but shall have no authority to enter into additional dry-cleaning solvent assessment agreements and dry-cleaning solvent remediation agreements after that date unless the Commission first determines either (i) that revenues will be available from the Fund to reimburse the costs of assessment and remediation activities expected to be reimbursable pursuant to the agreements, or (ii) that assessment and remediation activities undertaken pursuant to the agreements will be paid entirely from sources other than the Fund. For the purposes of this subsection, the term 'day of adjournment' shall mean: (i) in the case of a regular session held in an odd-numbered year, the day the General Assembly adjourns by joint resolution for more than 10 days, and (ii) in the case of a regular session held in an even-numbered year, the day the General Assembly adjourns sine die.

(e) The Commission shall pay the reimbursable response costs of eligible parties as they are incurred. If the cleanup of the contamination site is not completed as required by the remediation agreement, any response costs previously reimbursed for the cleanup shall be repaid to the Fund, with interest. The Commission shall request the Attorney General to commence a civil action to secure repayment of response costs and interest of the costs.

"§ 143-215.104O. Remediation of uncertified sites.

(a) In the event the owner or operator of a facility or the current owner of an abandoned site cannot be identified or located, unreasonably refuses to enter into either an assessment agreement or remediation agreement or cannot be made to comply with the provisions of an assessment agreement or remediation agreement between the petitioner and the Commission, the Commission may direct the Department or a private contractor engaged by the Commission to use staff, equipment, or materials under the control of the Department or contractor or provided by other cooperating federal, State, or local agencies to develop and implement a plan for abatement of an imminent hazard, or to provide interim alternative sources of drinking water to third parties affected by dry-cleaning solvent contamination resulting from a release at the facility or abandoned site. The cost of any of these actions shall be paid from the Fund. The Department or private contractor shall keep a record of all expenses incurred for personnel and for the use of equipment and materials and all other expenses of developing and implementing the remediation plan.

(b) The Commission shall request the Attorney General to commence a civil action to secure reimbursement of costs incurred under this subsection.

(c) In the event a civil action is commenced pursuant to this Part to recover monies paid from the Fund, the Commission may recover, in addition to any amount due, the costs of the action, including reasonable attorneys' fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the Fund or other source from which the expenditures were made.

"§ 143-215.104P. Enforcement procedures; civil penalties.

(a) The Secretary may assess a civil penalty of not more than ten thousand dollars ($10,000) or, if the violation involves a hazardous waste, as defined in G.S. 130-290, of not more than twenty-five thousand dollars ($25,000) against any person who:

(1) Fails to establish financial responsibility for a dry-cleaning facility or a wholesale distribution facility as required by this Part.

(2) Engages in dry-cleaning operations using dry-cleaning solvent for which the appropriate sales or use tax has not been paid.

(3) Fails to comply with rules adopted by the Commission pursuant to this Part.

(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Part.

(5) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

(6) Falsifies or tampers with any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.

(7) Knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Part or rules implementing this Part.

(8) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Part or rule implementing this Part.

(9) Knowingly makes a false statement of material fact in a rule-making proceeding or contested case under this Part.

(10) Refuses access to the Commission or its duly designated representative to any premises for purposes of conducting a lawful inspection provided for in this Part or rule implementing this Part.

(b) If any action or failure to act for which a penalty may be assessed under subsection (a) of this section is continuous, the Secretary may assess a penalty not to exceed ten thousand dollars ($10,000) per day or, if the violation involves a hazardous waste, as defined in G.S. 130-290, not exceed twenty-five thousand dollars ($25,000) per day. A penalty for a continuous violation shall not exceed two hundred thousand dollars ($200,000) for each period of 30 days during which the violation continues.

(c) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty for the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. The Secretary shall make the final decision regarding assessment of a civil penalty under this section.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver the remission request and the recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to

institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located in order to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section or requests remission of the assessment in whole or in part as provided in subsection (e) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or the violator's principal place of business is located to recover the amount of the assessment. A civil action must be filed within three years of the date the final agency decision or court order was served on the violator.

"**§ 143-215.104Q. Enforcement procedures; criminal penalties.**

(a) Any person who negligently commits any of the offenses set out in subdivisions (1) through (10) of G.S. 143-215.104P(a) shall be guilty of a Class 2 misdemeanor, which may include a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that the fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues.

(b) Any person who knowingly and willfully commits any of the offenses set out in subdivisions (1) through (10) of G.S. 143-215.104P(a) shall be guilty of a Class I felony, which may include a fine not to exceed one hundred thousand dollars ($100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars ($500,000) for each period of 30 days during which the violation continues. For the purposes of this subsection, the phrase 'knowingly and willfully' shall mean 'intentionally and consciously' as the courts of this State, according to the principles of common law, interpret the phrase in the light of reason and experience.

(c) (1) Any person who knowingly commits any of the offenses set out in subdivisions (3) through (10) of G.S. 143-215.104P(a) and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class C felony, which may include a fine not to exceed two hundred fifty thousand dollars ($250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars ($1,000,000) for each period of 30 days during which the violation continues.

(2) For the purposes of this subsection, a person's state of mind is knowing with respect to:

a. His conduct, if he is aware of the nature of his conduct.

b. An existing circumstance, if he is aware or believes that the circumstance exists.

c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(3) Under this subsection, the following should be considered in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:

a. The person is responsible only for actual awareness or actual belief that he possessed, and

b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business or profession, or of medical treatment or medical or scientific experimentation conducted by professionally approved methods, and the person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(d) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(e) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(f) For the purposes of the felony provisions of this section, a person's state of mind shall not be found 'knowingly and willfully' or 'knowingly' if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

(1) A natural disaster or other act of God that could not have been prevented or avoided by the exercise of due care or foresight.

(2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.

(3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.

(4) An act causing no significant harm to the environment or risk to public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.

(5) Violations causing no significant harm to the environment or risk to public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(6) Occasional, inadvertent, short-term violations causing no significant harm to the environment or risk to public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(g) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under law may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in light of reason and experience.

(h) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under law may apply to prosecutions brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in light of reason and experience.

(i) For purposes of this section, the term 'person' means, in addition to the definition contained in G.S. 143-212, any responsible corporate or public office or employee. If a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State and the vote on the referendum is against the means or machinery for carrying out the intent and purpose, then this section shall not apply to elected officials or to any responsible appointed officials or employees of the county, city, town, or other political subdivision.

"**§ 143-215.104R. Enforcement procedures; injunctive relief.**

Whenever the Commission has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part or rule implementing this Part, the Commission may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Commission for injunctive relief to restrain the violation or threatened violation and for other and further relief in the premises as the court shall deem proper. The Attorney General may institute an action in the superior court of the county in which the violation occurred or may occur or, in the Attorney General's discretion, in the superior court of the county in which the person responsible for the violation or

threatened violation resides or has a principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part or the rules of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to the proceedings from any penalty prescribed for violation of this Part. In the event a civil action is commenced pursuant to this section, the Commission may recover the costs of the action, including attorneys' fees and investigation expenses. All monies received or recovered shall be paid into the Fund or other source from which the expenditures were made.

"§ 143-215.104S. Appeals.

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104E through G.S. 143-215.104O may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated within the allotted time period, the Commission's decision shall be final and not subject to review. The Commission shall make the final agency decision in contested cases initiated pursuant to this section. The Commission shall not delegate its authority to make a final agency decision pursuant to this section.

"§ 143-215.104T. Construction of this Part.

(a) This Part is not intended to and shall not be construed to:

(1) Affect the ability of local governments to regulate land use under Article 19 of Chapter 160A of the General Statutes and Article 18 of Chapter 153A of the General Statutes. The use of the identified contamination site and any land-use restrictions in the dry-cleaning solvent remediation agreement shall be consistent with local land-use controls adopted under those statutes.

(2) Amend, modify, repeal, or otherwise alter any provision of any remedial program or other provision of law relating to civil and criminal penalties or enforcement actions and remedies available to the Department, except as may be provided in a dry-cleaning solvent remediation agreement.

(3) Prevent or impede the immediate response of the Department or responsible party to an emergency that involves an imminent or actual release of a regulated substance that threatens public health or the environment.

(4) Relieve a person receiving liability protection under this Part from any liability for contamination later caused by that person at a facility or abandoned site.

(5) Affect the right of any person to seek any relief available against any party to the dry-cleaning solvent remediation agreement who may have liability with respect to the facility or abandoned site, except that this Part does limit the relief available against any party to a remediation agreement with respect to assessment or

remediation of the contamination site to the assessment remediation required under the remediation agreement.

(6) Affect the right of any person who may have liability with respect to the facility or abandoned site to seek contribution from any other person who may have liability with respect to the facility or abandoned site and who neither received nor has liability protection under this Part.

(7) Prevent the State from enforcing specific numerical remediation standards, monitoring, or compliance requirements specifically required to be enforced by the federal government as condition to receive program authorization, delegation, primacy, or federal funds.

(8) Create a defense against the imposition of criminal and civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or from the pollution of the land, air, or waters of this State on a facility or abandoned site.

(9) Relieve a person of any liability for failure to exercise due diligence and reasonable care in performing an environmental assessment or transaction screen.

(b) Notwithstanding the provision of the Tort Claims Act, G.S. 143-291 through G.S. 143-300.1 or any other provision of law waiving the sovereign immunity of the State of North Carolina, the State, its agencies, officers, employees, and agents shall be absolutely immune from any liability in any proceeding for any injury or claim arising from negotiating, entering into, monitoring, or enforcing a dry-cleaning solvent assessment agreement, a dry-cleaning solvent remediation agreement, or a Notice of Dry-Cleaning Solvent Remediation under this Part or any other action implementing this Part.

"§ 143-215.104U. Reporting requirements.

(a) The Secretary shall present an annual report to the Environmental Review Commission that shall include at least the following:

(1) A list of all dry-cleaning solvent contamination reported to the Department.

(2) A list of all facilities and abandoned sites certified by the Commission and the status of contamination associated with each facility or abandoned site.

(3) An estimate of the cost of assessment and remediation required in connection with facilities or abandoned sites certified by the Commission and an estimate of assessment and remediation costs expected to be paid from the Fund.

(4) A statement of receipts and disbursements for the Fund.

(5) A statement of all claims against the Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other obligations.

(6) The adequacy of the Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Fund.

(b) The Secretary shall make the annual report required by this section on or before 1 October of each year."

Section 2. (a) G.S. 143B-282(a)(1)t. reads as rewritten:

"t. To have jurisdiction and supervision over oil pollution and dry-cleaning solvent use, contamination, and remediation pursuant to Article 21A of Chapter ~~143.~~ 143 of the General Statutes."

(b) G.S. 143B-282(a)(2) is amended by the addition of a new sub-subdivision to read:

"j. To implement the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes."

Section 3. G.S. 58-2-40 is amended by adding a new subdivision to read:

"(9) Adopt rules governing what shall constitute an uninsurable facility for the purposes of G.S. 143-215.104E(b). The rules shall base the determination of uninsurability on the availability of pollution and remediation legal liability insurance at an annual premium amount that is affordable and proportionate to premium amounts charged for coverage of facilities at which dry-cleaning solvent contamination is not known to be present. In no event shall the annual premium amount on which a determination of uninsurability is based be greater than three times the average premium that is charged for coverage of facilities at which dry-cleaning solvent contamination is not known to be present."

Section 4. Subchapter I of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5D.

"Dry-Cleaning Solvent Tax.

"**§ 105-187.30. Definitions.**

The definitions in G.S. 105-164.3 apply to this Article, and the following definitions apply to this Article:

(1) Dry-cleaning facility. -- Defined in G.S. 143-215.104B.

(2) Dry-cleaning solvent. -- Defined in G.S. 143-215.104B.

"**§ 105-187.31. Tax imposed.**

A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or consumption by a dry-cleaning facility in this State. The rate of the privilege tax and the excise tax is five dollars and eighty-five cents ($5.85) for each gallon of dry-cleaning solvent that is chlorine-based and eighty cents (80¢) for each gallon of dry-cleaning solvent that is hydrocarbon-based. These taxes are in addition to all other taxes.

"**§ 105-187.32. Administration.**

The privilege tax this Article imposes on a dry-cleaning solvent retailer is an additional State sales tax, and the excise tax this Article imposes on the storage, use, or consumption of dry-cleaning solvent by a dry-cleaning facility in this State is an additional State use tax. Except as otherwise provided in this Article these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when dry-cleaning solvent is sold at retail is a credit against the additional State use tax imposed on the storage, use, or consumption of the same dry-cleaning solvent.

"**§ 105-187.33. Exemptions and refunds.**

The exemptions in G.S. 105-164.13 do not apply to the taxes imposed by this Article. The refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article.

"**§ 105-187.34. Use of tax proceeds.**

The Secretary must credit the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, to the Dry-Cleaning Solvent Cleanup Fund. The Secretary may retain the Department's cost of collection, not to exceed one hundred twenty-five thousand dollars ($125,000) a year, as reimbursement to the Department."

Section 4.1. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(20) To furnish to the Environmental Management Commission information concerning whether a person who is requesting certification of a dry-cleaning facility or wholesale distribution facility from the Commission is liable for privilege tax under Article 5D of this Chapter."

Section 4.2. G.S. 130A-310.31(b)(3) reads as rewritten:

"(3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination and that is or may be subject to remediation under any State remedial program other than Part 2A of Article ~~21~~ 21A of Chapter 143 of the General Statutes or that is or may be subject to remediation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.)."

Section 4.3. G.S. 130A-310.31(b)(5) reads as rewritten:

"(5) 'Current standards' when used in connection with 'cleanup', 'remediated', or 'remediation' means that cleanup or remediation ~~activities at the site comply~~ of contamination complies with generally applicable standards, guidance, or established methods governing the contaminants ~~at the site~~ that are ~~adopted or published~~ established by statute or adopted, published, or

implemented by ~~the Commission,~~ the Environmental Management Commission, the Commission, or the ~~Department.~~ Department instead of the risk-based standards established by the Commission pursuant to this Part."

Section 4.4. G.S. 130A-310.31(b)(11) reads as rewritten:

"(11) 'Regulated substance' means a hazardous waste, as defined in G.S 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program implemented by the Department other than Part 2A of Article 21A of Chapter 143 of the General Statutes."

Section 4.5. G.S. 130A-310.37 is amended by adding a new subsection to read:

"(c) The Department shall not enter into a brownfields agreement for a brownfields site that is identified by the United States Environmental Protection Agency as a federal Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996 Edition)."

Section 5. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act until 1 January 1999.

Section 6. (a) The General Statutes set out in Sections 1, 4, and 4.1 of this act become effective on the date specified in the following table:

Statute	Effective Date
143-215.104A	When this act becomes law
143-215.104B	When this act becomes law
143-215.104C	When this act becomes law
143-215.104D	When this act becomes law
143-215.104E	1 April 1998
143-215.104F	1 January 1999
143-215.104G	1 January 1999
143-215.104H	1 January 1999
143-215.104I	1 January 1999
143-215.104J	1 January 1999
143-215.104K	1 January 1999
143-215.104L	1 January 1999
143-215.104M	1 January 1999
143-215.104N	1 January 1999
143-215.104O	1 January 1999
143-215.104P	1 January 1998
143-215.104Q	1 January 1998
143-215.104R	1 January 1998
143-215.104S	1 January 1998
143-215.104T	1 January 1998
143-215.104U	1 January 1998

105-187.30	1 October 1997
105-187.31	1 October 1997
105-187.32	1 October 1997
105-187.33	1 October 1997
105-187.34	1 October 1997
105-259(b)(20)	1 January 1999.

(b) Sections 2 and 3 of this act become effective 1 October 1997.

(c) Sections 4.2 through 4.5 of this act become effective if and when 1997 House Bill 1121 becomes law.

(d) Sections 5 through 8 of this act are effective when this act becomes law.

(e) The Secretary of Environment, Health, and Natural Resources shall make the first annual report required under G.S. 143-215.104U on or before 1 October 1998.

(f) The Environmental Management Commission shall adopt rules and develop forms, strategies, and other procedures required or authorized by subdivisions (1) and (3) of G.S. 143-215.104D(b) on or before 1 January 1999.

Section 7. (a) Any person who undertakes assessment or remediation of dry-cleaning solvent contamination pursuant to an enforcement action by the Department of Environment, Health, and Natural Resources during the period beginning 1 October 1997 and 1 January 1999 may, on or after 1 January 1999 seek reimbursement from the Dry-Cleaning Solvent Cleanup Fund for any costs exceeding fifty thousand dollars ($50,000). The Commission shall reimburse costs if it finds that the costs incurred were (i) reasonably necessary to assess or remediate the dry-cleaning solvent contamination; (ii) for any of the activities described in subdivisions (1) through (7) of G.S. 143-215.104N(a); (iii) not subject to any of the limitations in subdivisions (4) or (5) of G.S. 143-215.104N(b); (iv) not reimbursable from pollution and remediation legal liability insurance; and (v) required by a specific order of the Department of Environment, Health, and Natural Resources issued on or after 30 June 1996. No reimbursement may be paid pursuant to this section for dry-cleaning solvent contamination that did not result from operations at a dry-cleaning or wholesale distribution facility.

(b) Any person who, as of 1 January 1999, is undertaking assessment or remediation of dry-cleaning solvent contamination shall be eligible to petition the Commission to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with respect to the contamination. In calculating the required financial contribution of parties to any agreement, the Commission shall determine the cost of any unreimbursed assessment or remediation activity undertaken by the parties with respect to the contamination site prior to 1 January 1999 and shall credit the amount toward any applicable financial responsibility limits established in G.S. 143-215.104F.

Section 8. Section 7 of this act is repealed effective 1 January 2000. Any reimbursement authorized pursuant to Section 7 prior to 1 January 2000 shall be paid in accordance with the provisions of that section. Section 4 of this act is repealed

effective 1 January 2010. Sections 1 and 4.1 of this act are repealed effective 1 January 2012. However:

(1) G.S. 143-215.104K is not repealed to the extent that it applies to liability arising from dry-cleaning solvent contamination described in a Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement entered into by the Environmental Management Commission pursuant to G.S. 143-215.104H and G.S. 143-215.104I.

(2) Any Dry-Cleaning Solvent Assessment Agreement or Dry-Cleaning Solvent Remediation Agreement in force as of 1 January 2012 shall continue to be governed by the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes as though those provisions had not been repealed.

(3) G.S. 143-215.104D(b)(2) is not repealed; rules adopted by the Environmental Management Commission pursuant to G.S. 143-215.104D(b)(2) shall continue in effect; and those rules may be enforced pursuant to G.S. 143-215.104P, 143-215.104Q, and 143-215.104R, which shall remain in effect for that purpose.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 225

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

H225-ART-002.1 Page 1 of __

Date_____,1997

Comm. Sub. [YES]
Amends Title []
Third Edition PCS 4140

moves to amend the bill on page 1, line 5, by rewriting that line to read:

"Whereas, there are drycleaning operations in the State at which drycleaning solvent contamination has or may have occurred; and

Whereas, many instances of drycleaning solvent contamination have resulted from solvent handling practices that were lawful and common at the time such practices were undertaken; and

Whereas, the financial resources of individual drycleaning operators are frequently insufficient to assess and remediate drycleaning solvent contamination to current environmental standards; and

Whereas, the drycleaning industry, through the North Carolina Association of Launderers and Cleaners, has expressed a willingness and desire to work cooperatively and to share financial resources to address drycleaning solvent contamination resulting from drycleaning facilities; and

Whereas, the level of remediation required for drycleaning solvent contamination can be determined using the same risk-assessment techniques that are currently being applied to releases of other regulated substances; and

Whereas, assessment and remediation of drycleaning solvent contamination sites in this State can be accelerated through the use of an industry-supported funding mechanism; Now, therefore, The General Assembly of North Carolina enacts:"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 225

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

H225-ART-002.1

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3rd Edition PCS 4140

H. B. No. 225 DATE

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

COMMITTEE SUBSTITUTE Yes

~~Rep.~~ Sen. Albertson

moves to amend the bill on page 34, line 6

( ) WHICH CHANGES THE TITLE

by deleting "Review" and inserting "Management" and

on page 34 by rewriting lines 24 through 28 (read in those lines) to read:

"of contamination complies with generally Applicable standards, guidance, or established methods governing the contaminants that are established by Statute or adopted, published, or implemented by the Commission, the Commission, ~~or~~ Health Services, or the Department, instead of the Risk-Based standards established by the Commission pursuant to this Part."

SIGNED

ADOPTED FAILED TABLED

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 631
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 7/10/97
Fourth Edition Engrossed 7/17/97

Short Title: Forsyth Room Tax Distribution. (Local)

Sponsors:

Referred to:

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FORMULA FOR DISTRIBUTING THE PROCEEDS OF THE FORSYTH COUNTY OCCUPANCY TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 28 of Chapter 908 of the 1983 Session Laws, as amended, reads as rewritten:

"Sec. 28. Disposition of ~~Taxes Collected.~~ Two Percent (2%) and One Percent (1%) Taxes. (a) Forsyth County shall remit the net proceeds of the occupancy ~~tax~~ taxes levied under Sections 24, 25, and 30.1 of this Part on a quarterly basis as follows: ~~(i) five~~

(1) Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata ~~basis; and (ii) the~~ basis.

(2) The remaining net proceeds shall be remitted to the Forsyth County Tourism Development Authority.

'Net proceeds' ~~means gross proceeds less the cost to the county of administering and collecting the tax.~~ has the meaning provided in Section 30.2(d) of this Part.

(b) A municipality may expend funds distributed to it pursuant to subsection (a) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (a) to further the development of travel, tourism, and

conventions within Forsyth County. The Forsyth County Tourism Development Authority may not use more than ten percent (10%) of the funds distributed to it pursuant to subsection (a) for administrative expenses."

Section 2. Section 30.2 of Part VII of Chapter 908 of the 1983 Session Laws, as enacted by Chapter 870 of the 1989 Session Laws, reads as rewritten:

"Sec. 30.2. Additional Tax. (a) Levy. -- In addition to the taxes authorized by Sections 24, 25, and 30.1 of this Part, the Forsyth County Board of Commissioners may levy a room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of accommodations taxable under those sections. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with Sections 24 through 27 and 29 through 30 of this Part. Forsyth County may not levy a tax under this section unless it also levies taxes under Sections 24, 25, and 30.1 of this Part.

(b) Distribution. -- The net proceeds of the tax levied under this section shall be distributed as follows:

(1) ~~(i) five~~ Five percent (5%) of the net proceeds shall be divided among the municipalities in Forsyth County, other than Winston-Salem, on a pro rata ~~basis; and (ii) the~~ basis.

(2) After subtracting the amount provided in subdivision (1) of this subsection, one-third of the remaining net proceeds shall be ~~divided among Forsyth County, the City of Winston-Salem, and~~ remitted to the Forsyth County Tourism Development ~~Authority on a pro rata basis.~~ Authority.

(3) After subtracting the amounts provided in subdivisions (1) and (2) of this subsection, ten percent (10%) of the remaining net proceeds shall be divided among those municipalities in Forsyth County, other than Winston-Salem, in which taxable establishments are located, in proportion to the amount of tax proceeds collected in each municipality.

(4) After subtracting the amounts provided in subdivisions (1), (2), and (3) of this subsection, the remaining net proceeds shall be divided between Forsyth County and the City of Winston-Salem on a pro rata basis.

~~'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.~~

(c) Use. -- A municipality that receives funds pursuant to subdivision (b)(3) of this section shall, on a quarterly basis, remit all the funds it receives pursuant to this Part to its municipal Tourism Development Authority. Each municipal Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the municipality and shall use the remainder for tourism-related expenditures. No more than ten percent (10%) of the funds remitted to an Authority under this subsection may be used for the Authority's administrative expenses, including salaries and benefits.

Forsyth County or a municipality that does not receive funds pursuant to subdivision (b)(3) of this section may expend funds distributed to it pursuant to subsection (b) only for economic development and cultural and recreational purposes. The Forsyth County Tourism Development Authority shall expend the funds distributed to it pursuant to subsection (b) in accordance with Section 28(b) of this Part.

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

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. -- Expenditures that, in the judgment of the entity making the expenditure, are designed to increase the use of lodging and meeting and convention facilities in the area by attracting tourists or business travelers to the area; the term includes tourism-related capital expenditures."

Section 3. Part VII of Chapter 908 of the 1983 Session Laws, as amended by Chapters 33 and 924 of the 1985 Session Laws and Chapter 870 of the 1989 Session Laws, is amended by adding a new section to read:

"Sec. 30.3. Municipal Tourism Development Authorities. (a) When a municipality first receives a distribution of funds pursuant to Section 30.2(b)(3) of this Part, its governing body shall adopt a resolution creating a municipal Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide that there will be five members of the Authority appointed by the governing body of the municipality and shall provide for the members' terms of office and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the municipality and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the municipality. The governing body of the municipality shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the municipality shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the funds distributed to it pursuant to Section 30.2(c) of this Part for the purposes provided in Section 30.2(c) of this Part. The Authority shall promote travel and tourism and make tourism-related expenditures.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the governing body of the municipality on its receipts and expenditures for the preceding quarter and for the year in such detail as the governing body may require."

Section 4. This act becomes effective August 1, 1997, and applies to taxes levied on or after that date.

EXPLANATION OF HOUSE BILL 631:
Forsyth Room Tax Distribution (4th Edition)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 22, 1997

This bill changes the method by which the Forsyth County occupancy tax is distributed. Forsyth County levies a total of 6% in occupancy taxes, made up of a 2% tax, a 1% tax, and a 3% tax. The county deducts the cost of collecting and administering the taxes and distributes the net proceeds. Under current law, the 1% and 2% taxes are distributed as follows: 5% to the municipalities (other than Winston-Salem) in the county; the remainder to the Forsyth County Tourism Development Authority. Under current law, the 3% tax is distributed as follows: 5% to the municipalities (other than Winston-Salem) in the county; the remainder divided evenly between Winston-Salem, Forsyth County, and the Forsyth County Tourism Development Authority.

Section by Section Analysis

1. Section 1 of the bill makes clarifying changes to the 2% and 1% taxes.
2. Section 2 of the bill changes the distribution of the 3% tax by redirecting 10% of the amount that Winston Salem and Forsyth County would otherwise receive to those municipalities in Forsyth County (other than Winston-Salem) in which taxable establishments are located. Section 2 of the bill also provides that municipalities (other than Winston-Salem) that have taxable establishments must create a five-member Tourism Development Authority to expend the room tax proceeds, at least 2/3 to promote tourism and the remainder for tourism-related expenditures.
3. Section 3 of the bill provides for the creation of these Tourism Development Authorities and states that they may not spend more than 10% of the room tax proceeds for administrative expenses, including salaries and benefits.
4. Section 4 of the bill sets the effective date at August 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 566
Committee Substitute Favorable 7/3/97

Short Title: Wake Schools Development Charges. (Local)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT EXEMPTING THE WAKE COUNTY PUBLIC SCHOOL SYSTEM FROM DEVELOPMENT CHARGES RELATED TO THE CONSTRUCTION, RENOVATION, AND REPAIR OF PUBLIC SCHOOL SYSTEM INFRASTRUCTURE FACILITIES IN WAKE COUNTY AND THE MUNICIPALITIES THEREIN.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, the Wake County Public School System shall be exempt from development charges assessed by Wake County or any municipality having territory within Wake County where the development charge is assessed against the construction, renovation, or repair of public school infrastructure facilities.

Section 2. For the purposes of this act:

(a) "Development charge" means any:

(1) Impact fee, facility fee, development fee, project fee, regulatory fee, or other similar fee assessed in connection with the construction, renovation, or repair of a public school infrastructure facility where the fee is based on the student seating capacity of the facility.

(2) Water and sewer acreage fee when the Wake County Public School System has installed water and sewer improvements.

(3) Transportation development fee when the Wake County Public School System has installed transportation improvements.

(4) Utility tap fee.
(5) Plan review fee.
(6) Building permit fee.
(7) Fee to place a mobile classroom unit on property owned by the Wake County Public School System.

(b) "Public school infrastructure facility" means any building, structure, or other facility used or to be used by the Wake County Public School System for instructional, administrative, or maintenance purposes. The term includes mobile classroom units.

Section 3. This act is effective when it becomes law and applies to Wake County Public School System construction, renovation, and repair projects started or in progress on or after that date, except that any valid development charge that accrued prior to that date shall remain valid and payable by the Wake County Public School System.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 568
Committee Substitute Favorable 6/26/97
Committee Substitute #2 Favorable 7/16/97

Short Title: Wake Forest Annexation. (Local)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT CONCERNING SATELLITE ANNEXATIONS BY THE TOWN OF WAKE FOREST.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 160A-58.1(b) is amended by adding a new subdivision to read:

"(2a) If any territory proposed for annexation under this Part is an area that another city has agreed not to annex under an agreement with the annexing city under Part 6 of this Article, then the proximity to that other city shall not be considered in applying subdivision (2) of this subsection. This subdivision applies only where the annexing city is the Town of Wake Forest."

(b) Section 2(b) of Chapter 882 of the 1989 Session Laws reads as rewritten:

"(b) Except as provided by G.S. 160A-58.1(b)(2a) or subsection (a) of this section, the provisions of Part 4 of Article 4A of Chapter 160A of the General Statutes shall continue to apply to the Town of Wake Forest."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 568
Committee Substitute Favorable 6/26/97
Committee Substitute #2 Favorable 7/16/97
Proposed Senate Committee Substitute H568-PCS7358

Short Title: Wake Forest/Beaufort Annexation. (Local)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT CONCERNING SATELLITE ANNEXATIONS BY THE TOWN OF WAKE FOREST AND CONCERNING A SATELLITE ANNEXATION BY THE TOWN OF BEAUFORT.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 160A-58.1(b) is amended by adding a new subdivision to read:

"(2a) If any territory proposed for annexation under this Part is an area that another city has agreed not to annex under an agreement with the annexing city under Part 6 of this Article, then the proximity to that other city shall not be considered in applying subdivision (2) of this subsection. This subdivision applies only where the annexing city is the Town of Wake Forest."

(b) Section 2(b) of Chapter 882 of the 1989 Session Laws reads as rewritten:

"(b) Except as provided by G.S. 160A-58.1(b)(2a) or subsection (a) of this section, the provisions of Part 4 of Article 4A of Chapter 160A of the General Statutes shall continue to apply to the Town of Wake Forest."

Section 1.1. The provisions of G.S. 160A-58.1(b)(5) do not apply to the annexation of the Harry Taylor Farms property by the Town of Beaufort.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 495
Committee Substitute Favorable 5/21/97

Short Title: Natural Gas. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO ADDRESS NORTH CAROLINA'S URGENT INFRASTRUCTURE NEEDS BY CLARIFYING THAT THE NORTH CAROLINA UTILITIES COMMISSION MAY ESTABLISH DIFFERENT RATES FOR NATURAL GAS SERVICE TO UNSERVED COUNTIES THAT REFLECT THE COST OF PROVIDING SERVICE TO THE UNSERVED COUNTIES AND AUTHORIZING THE CREATION OF NATURAL GAS DISTRICTS FOR NATURAL GAS EXPANSION.

The General Assembly of North Carolina enacts:

PART I.

DIFFERENT RATES

Section 1. G.S. 62-140(a) reads as rewritten:

"(a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section; provided that it shall not be an unreasonable preference or advantage or constitute discrimination against any person, firm or corporation or general rate payer for telephone utilities to contract with motels, hotels and hospitals to pay reasonable commissions in connection with the handling of intrastate toll calls charged to a guest or patient and collected by the motel, hotel or hospital; provided further, that payment of such commissions shall be in accordance with uniform tariffs

which shall be subject to the approval of the Commission. Provided further, that it shall not be considered an unreasonable preference or advantage for the Commission to order, if it finds the public interest so requires, a reduction in local telephone rates for low-income residential consumers meeting a means test established by the Commission in order to match any reduction in the interstate subscriber line charge authorized by the Federal Communications Commission.

Nothing in this section prohibits the Commission from establishing different rates for natural gas service to counties that are substantially unserved, to the extent that those rates reflect the cost of providing service to the unserved counties and upon a finding by the Commission that natural gas service would not otherwise become available to the counties."

PART II.

NATURAL GAS DISTRICTS

Section 2. Chapter 160A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 27.

"Regional Natural Gas District.

"§ 160A-630. Title.

This Article is the 'Regional Natural Gas District Act' and may be cited by that name.

"§ 160A-631. Purpose; definitions.

(a) The purpose of a district created under this Article is to enhance the quality of life in its territorial jurisdiction by promoting the development of natural gas distribution systems to enhance the economic development of the area.

(b) The following definitions apply in this Article:

(1) Board of Trustees. -- The governing board of the district in which the general legislative powers of the district are vested.

(2) District. -- A regional natural gas district.

(3) Regional natural gas district. -- A body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers, and subject to the restrictions set forth in this Article.

(4) Unit of local government. -- Any county, city, town, or municipality of this State, and any other political subdivision, public corporation, or district in this State, that is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, or operate natural gas systems.

(5) Unit of local government's chief administrative official. -- The county manager, city manager, town manager, or other person, by whatever title known, in whom the responsibility for the unit of local government's administrative duties is vested.

"§ 160A-632. Territorial jurisdiction and service area of district.

(a) A district may be created for one or more entire counties that are totally unserved with natural gas and in which a specific natural gas project has not been

approved by the Utilities Commission at the time of creation of the district. This area is the territorial jurisdiction and the service area of the district.

(b) The creation of a district does not confer on the district the exclusive right to provide natural gas service in that territorial jurisdiction.

"§ 160A-633. Creation of district.

(a) The boards of commissioners of any one or more counties within an area for which a district may be created as provided by G.S. 160A-632 may by resolution signify their determination to organize a district under the provisions of this Article. Each of these resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the district, and shall state the time and place of the public hearing. A copy of the notice shall be mailed not later than the first day of newspaper publication to the business office of any public utility that holds a franchise from the North Carolina Utilities Commission to serve any part of the proposed district with natural gas service. No county shall be required to make any other publication of the resolution under the provisions of any other law. Any municipality located within the area may join the district by following the procedures set out in this section.

(b) Each resolution shall include articles of incorporation which shall set forth all of the following:

(1) The name of the district.

(2) The composition of the board of trustees, terms of office, and the manner of making appointments and filling vacancies.

(3) A statement that the district is organized under this Article.

(4) The names of the organizing counties and municipalities.

(5) Provision for the distribution of assets in the event the district is terminated.

(c) A certified copy of each of the resolutions signifying the determination to organize a district under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication and mailing of the notice of hearing on each of the resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published and mailed, the Secretary of State shall file the resolutions and proofs of publication and mailing, shall issue a certificate of incorporation under the seal of the State, and shall record the certificate in an appropriate book of record. The issuance of this certificate of incorporation by the Secretary of State shall constitute the district a public body and body politic and corporate of the State of North Carolina. The certificate of incorporation shall be conclusive evidence of the fact that the district has been duly created and established under this Article.

(d) When the district has been duly organized and its officers elected, the secretary of the district shall certify to the Secretary of State the names and addresses

of the officers, the name and address of the registered agent, and the address of the principal office of the district. The district shall be subject to the provisions of Article 5 of Chapter 55A of the General Statutes.

"§ 160A-634. Membership; officers; compensation.

(a) The governing body of a district is the Board of Trustees. The Board of Trustees shall consist of members as provided in the articles of incorporation.

(b) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(c) Members of the Board of Trustees shall reside within the territorial jurisdiction of the district as defined by G.S. 160A-632.

(d) The Board of Trustees shall annually elect from its membership a Chair and a Vice-chair, and shall annually elect a Secretary and a Treasurer.

(e) Members of the Board of Trustees shall receive a sum not to exceed fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the district.

"§ 160A-635. Quorum.

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business.

"§ 160A-636. Advisory committees.

The Board of Trustees may provide for the selection of any advisory committees that it finds appropriate, which may or may not include members of the Board of Trustees.

"§ 160A-637. General powers of the district.

The general powers of the district include all of the following:

(1) To sue and be sued.

(2) To have a seal.

(3) To make rules not inconsistent with this Article, for its organization and internal management.

(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the district and to fix their compensation, within the limit of available funds.

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.

(6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice.

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the property is no longer required for purposes

of the district, or exchange it for other property or rights which are useful for the district's purposes. Except as provided in any covenant or debt instrument designed to protect the creditor, if any loans or grants by the Department of Commerce have not been repaid, all or a substantial part of an operating natural gas district may not be disposed of without the approval of the Department of Commerce. If the sale is approved by the Department of Commerce, the district shall repay the State the lesser of the amount of any capital grant made by the State or one-half of the amount of the proceeds.

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a natural gas system. The district also may contract for the maintenance, operation, or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties.

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances, or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government.

(10) To develop and make data, plans, information, surveys, and studies of natural gas facilities within the territorial jurisdiction of the district and to prepare and make recommendations in regard thereto.

(11) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations. This entry shall not be deemed a trespass except that the district shall be liable for any actual and consequential damages resulting from the entry.

(12) To develop and carry out demonstration projects.

(13) To make, enter into, and perform contracts with private parties and natural gas companies with respect to the management and operation of natural gas systems.

(14) To make, enter into, and perform contracts with any public utility, railroad, or transportation company for the joint use of property or rights.

(15) To own, lease, and operate gas production, storage, transmission, and distribution systems. These systems may also include the purchase or lease, or both, of natural gas fields and natural gas reserves within the State, and the purchase of natural gas supplies within or without the State. A district may operate that part of a gas system involving the purchase or lease, or both, of natural gas fields, natural gas reserves, and natural gas supplies, in an operating agreement, partnership or joint venture arrangement

with natural gas utilities and private enterprise. The district may acquire, purchase, construct, receive, own, operate, maintain, enlarge, and improve natural gas systems, and transport and sell at wholesale all or any part of its gas supply.

(16) To purchase or finance real or personal property under G.S. 160A-20.

(17) To obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source.

(18) To enter into and perform contracts and agreements with other natural gas districts, regional natural gas districts, or units of local government pursuant to the provisions of Part 1 of Article 20 of Chapter 160A of the General Statutes) and to enter into contracts and agreements with private natural gas companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a natural gas system outside the service area of the district.

(19) Except as restricted by covenants in bonds, notes, security interests, or trust certificates, to set in its sole discretion rates, fees, and charges for use of its natural gas system in accordance with G.S. 160A-648.

(20) To do all related things necessary to carry out its purpose and to exercise the powers granted to the district.

(21) To issue bonds or other obligations of the district as provided by law and apply the proceeds thereof to the financing of any natural gas system or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or other obligations.

"§ 160A-638. Fiscal accountability.

A district is a public authority subject to the provisions of Chapter 159 of the General Statutes.

"§ 160A-639. Funds.

The establishment and operation of a district is a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the district. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the district. A district may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Commerce may allocate to a district any funds appropriated for natural gas.

"§ 160A-640. Effect on existing franchises and operations.

Creation of the district does not affect any existing franchises granted by any unit of local government. Those existing franchises shall continue in full force and effect until legally terminated, and all ordinances and resolutions of the unit of local government regulating local natural gas systems shall continue in full force and effect

unless superseded by rules of the district. This superseding, if any, may occur only on the basis of prior mutual agreement between the district and the respective unit of local government.

"§ 160A-641. Termination of district.

The Board of Trustees, after providing for the continued availability of natural gas service to its customers, if any, may terminate the existence of the district at any time when it has no outstanding indebtedness. The Board of Trustees shall file notification of the termination with the Secretary of State.

"§ 160A-642. Controlling provisions.

Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling.

"§ 160A-643. Bonds and notes authorized.

In addition to the powers granted by this Article, the district may issue bonds and notes pursuant to the provisions of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for the purpose of financing natural gas systems or any part thereof and to refund the bonds and notes, whether or not in advance of their maturity or earliest redemption date.

"§ 160A-644. Equipment trust certificates.

In addition to the powers granted in this Article, the district shall have continuing power to purchase equipment, and in connection therewith to execute agreements, leases with or without option to purchase, or equipment trust certificates. All money required to be paid by the district under the provisions of these agreements, leases with or without option to purchase, and equipment trust certificates shall be payable solely from the fares, fees, rentals, charges, revenues, and earnings of the district, moneys derived from the sale of any surplus property of the district and gifts, grants, and contributions from any source. Payment for such equipment or rentals therefore, may be made in installments; the deferred installments may be evidenced by equipment trust certificates payable solely from the aforesaid revenues or receipts and title to the equipment may or may not vest in the district until the equipment trust certificates are paid.

"§ 160A-645. Acquisition, power of eminent domain.

(a) The district shall have continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the district.

(b) Exercise of the power of eminent domain by the district shall be as a private condemnor in accordance with Chapter 40A of the General Statutes. Notwithstanding Chapter 40A of the General Statutes, before final judgment may be entered in any action of condemnation initiated by the district, the district shall furnish proof that the county board of commissioners of the county where the land is located has consented by resolution or ordinance to the taking.

"§ 160A-646. Tax exemption.

Property owned by the district is exempt from property tax. Income of the district is exempt from State income tax. This tax exemption does not apply to the lease, or

other arrangement that amounts to a leasehold interest, of district property to a private party, or to the income of the lessee, unless the property is leased solely for the purpose of the district, in which case the activities of the lessee are considered the activities of the district. The interest on bonds or obligations issued by the district are exempt from State taxes.

"**§ 160A-647. Authority to fix and enforce rates.**

(a) A district may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties made applicable throughout the district for the gas services. Schedules of rents, rates, fees, charges, or penalties may vary according to classes of service. Before it establishes or revises a schedule of rents, rates, fees, charges, or penalties, the district Board of Trustees shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing.

(b) A district may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. A district may also discontinue service to any customer whose account remains delinquent for more than 30 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the district to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the person contracting for them and shall in no case be a lien upon the property or premises served.

(d) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the owner of the premises served when the property or premises are leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter."

Section 3. G.S. 105-116 reads as rewritten:

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

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

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

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

(2a) A regional natural gas district created under Article 27 of Chapter 160A of the General Statutes.

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

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

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

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

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

(1) The ~~company's~~ taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The ~~company's~~ taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under G.S. Chapter 159B or a municipality having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the ~~company~~ taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power ~~company or~~ company, a natural gas company, or a regional natural gas district, the ~~company's~~ entity's gross receipts from the sale within each municipality of the commodities and services described in subsection (a).

A ~~company~~ taxpayer shall report its gross receipts on an accrual basis.

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

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

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

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

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

(e) Local Tax. -- So long as there is a distribution to municipalities of the amount herein provided from the tax imposed by this section, no municipality shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before

January 1, 1947. If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment.

(f) Municipal Exemption. -- The tax imposed by this section does not apply to a municipal corporation. A regional natural gas district is not considered a municipal corporation under this section."

Section 4. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means an electric power company, a gas company, ~~or~~ a telephone ~~company~~ company, or a regional natural gas district that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. 105-120(e) or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.14(c) is amended by adding a new subdivision to read:

"(22) A regional natural gas district created pursuant to Article 27 of Chapter 160A of the General Statutes."

Section 6. G.S. 159-81(1) reads as rewritten:

"(1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, and joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, but not any other forms of local government."

Section 7. G.S. 160A-20(h) reads as rewritten:

"(h) As used in this section, the term 'unit of local government' means any of the following:

(1) A county.
(2) A city.
(3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
(4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.

(5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.

(5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995; provided that the authority granted by this section may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.

(6) A local school administrative unit (i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and (ii) whose board of education is authorized to levy a school tax.

(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.

(8) A consolidated city-county, as defined by G.S. 160B-2(1).

(9) A regional natural gas district, as defined by Article 27 of this Chapter."

Section 8. G.S. 62-3(23) is amended by adding a new sub-subdivision to read:

"k. The term 'public utility' shall not include a regional natural gas district organized and operated pursuant to Article 27 of Chapter 160A of the General Statutes."

Section 9. G.S. 62-50(g) reads as rewritten:

"(g) For the purpose of this section, 'gas operators' include gas utilities and gas pipeline carriers operating under a franchise from the Utilities Commission, municipal corporations operating municipally owned gas distribution systems, regional natural gas districts organized and operated pursuant to Article 27 of Chapter 160A of the General Statutes, and public housing authorities and any person operating apartment complexes or mobile home parks that distribute or submeter natural gas to their tenants. This section does not confer any other jurisdiction over municipally owned gas distribution systems, regional natural gas districts, public housing authorities or persons operating apartment complexes or mobile home parks."

PART III.
EFFECTIVE DATES

Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 495
Committee Substitute Favorable 5/21/97
Proposed Committee Substitute H495-PCS7354

Short Title: Natural Gas. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO ADDRESS NORTH CAROLINA'S URGENT INFRASTRUCTURE NEEDS BY CLARIFYING THAT THE NORTH CAROLINA UTILITIES COMMISSION MAY ESTABLISH DIFFERENT RATES FOR NATURAL GAS SERVICE TO UNSERVED COUNTIES THAT REFLECT THE COST OF PROVIDING SERVICE TO THE UNSERVED COUNTIES AND AUTHORIZING THE CREATION OF NATURAL GAS DISTRICTS FOR NATURAL GAS EXPANSION.

The General Assembly of North Carolina enacts:

PART I.

DIFFERENT RATES

Section 1. G.S. 62-140(a) reads as rewritten:

"(a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section; provided that it shall not be an unreasonable preference or advantage or constitute discrimination against any person, firm or corporation or general rate payer for telephone utilities to contract with motels, hotels and hospitals to pay reasonable commissions in connection with the handling of intrastate toll calls charged to a guest or patient and collected by the motel, hotel or hospital; provided

further, that payment of such commissions shall be in accordance with uniform tariffs which shall be subject to the approval of the Commission. Provided further, that it shall not be considered an unreasonable preference or advantage for the Commission to order, if it finds the public interest so requires, a reduction in local telephone rates for low-income residential consumers meeting a means test established by the Commission in order to match any reduction in the interstate subscriber line charge authorized by the Federal Communications Commission.

Nothing in this section prohibits the Commission from establishing different rates for natural gas service to counties that are substantially unserved, to the extent that those rates reflect the cost of providing service to the unserved counties and upon a finding by the Commission that natural gas service would not otherwise become available to the counties."

PART II.

NATURAL GAS DISTRICTS

Section 2. Chapter 160A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 27.

"Regional Natural Gas District.

"§ 160A-630. Title.

This Article is the 'Regional Natural Gas District Act' and may be cited by that name.

"§ 160A-631. Purpose; definitions.

(a) The purpose of a district created under this Article is to enhance the quality of life in its territorial jurisdiction by promoting the development of natural gas systems to enhance the economic development of the area.

(b) The following definitions apply in this Article:

(1) Board of Trustees. -- The governing board of the district in which the general legislative powers of the district are vested.

(2) District. -- A regional natural gas district.

(3) Natural gas system. -- A gas production, storage, transmission and distribution system, or any part or parts thereof.

(4) Regional natural gas district. -- A public body and body politic and corporate of the State of North Carolina organized in accordance with the provisions of this Article exercising public and essential governmental functions to provide for the preservation and promotion of the public welfare for the purposes, with the powers, and subject to the restrictions set forth in this Article.

(5) Unit of local government. -- Any county, city, town, or municipality of this State, and any other political subdivision, public corporation, or district in this State, that is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, or operate natural gas systems.

(6) Unit of local government's chief administrative official. -- The county manager, city manager, town manager, or other person, by

whatever title known, in whom the responsibility for the unit of local government's administrative duties is vested.

"§ 160A-632. Territorial jurisdiction and service area of district.

(a) A district may be created for one or more entire counties that are totally unserved with natural gas and in which a specific natural gas project has not been approved by the Utilities Commission at the time of creation of the district. A letter from the Utilities Commission to this effect shall conclusively establish that the area is totally unserved and that a project has not been approved. This area is the territorial jurisdiction and the service area of the district.

(b) The creation of a district does not confer on the district the exclusive right to provide natural gas service in that territorial jurisdiction.

"§ 160A-633. Creation of district.

(a) The boards of commissioners of any one or more counties within an area for which a district may be created as provided by G.S. 160A-632, and the governing body of any city geographically located within one or more of these counties and that chooses to join in the organization of a district, may by resolution signify their determination to organize a district under the provisions of this Article. Each of these resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the district, and shall state the time and place of the public hearing. A copy of the notice shall be mailed not later than the first day of newspaper publication to the business office of any public utility that holds a franchise from the North Carolina Utilities Commission to serve any part of the proposed district with natural gas service. No county or city shall be required to make any other publication of the resolution under the provisions of any other law.

(b) Each resolution shall include articles of incorporation which shall set forth all of the following:

(1) The name of the district.

(2) The composition of the board of trustees, terms of office, and the manner of making appointments and filling vacancies.

(3) A statement that the district is organized under this Article.

(4) The names of the organizing counties and cities.

(5) Provision for the distribution of assets in the event the district is terminated.

(c) A certified copy of each of the resolutions signifying the determination to organize a district under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication and mailing of the notice of hearing on each of the resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published and mailed, the Secretary of State shall file the resolutions and proofs of publication and mailing, shall issue a certificate

of incorporation under the seal of the State, and shall record the certificate in an appropriate book of record. The issuance of this certificate of incorporation by the Secretary of State shall constitute the district a public body and body politic and corporate of the State of North Carolina. The certificate of incorporation shall be conclusive evidence of the fact that the district has been duly created and established under this Article.

(d) When the district has been duly organized and its officers elected, the secretary of the district shall certify to the Secretary of State the names and addresses of the officers, the name and address of the registered agent, and the address of the principal office of the district. The district shall be subject to the provisions of Article 5 of Chapter 55A of the General Statutes.

"**§ 160A-634. Membership; officers; compensation.**

(a) The governing body of a district is the Board of Trustees. The Board of Trustees shall consist of members as provided in the articles of incorporation.

(b) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(c) Members of the Board of Trustees shall reside within the territorial jurisdiction of the district as defined by G.S. 160A-632.

(d) The Board of Trustees shall annually elect from its membership a Chair and a Vice-Chair and shall annually elect a Secretary and a Treasurer.

(e) Members of the Board of Trustees shall receive a sum not to exceed fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the district.

"**§ 160A-635. Quorum.**

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business.

"**§ 160A-636. Advisory committees.**

The Board of Trustees may provide for the selection of any advisory committees that it finds appropriate, which may or may not include members of the Board of Trustees.

"**§ 160A-637. General powers of the district.**

The general powers of the district include all of the following:

(1) To sue and be sued.

(2) To have a seal.

(3) To make rules not inconsistent with this Article, for its organization and internal management.

(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the district and to fix their compensation, within the limit of available funds.

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.

(6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice.

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the property is no longer required for purposes of the district, or exchange it for other property or rights which are useful for the district's purposes. Except as provided in any covenant or debt instrument designed to protect the creditor, if any loans or grants by the Department of Commerce have not been repaid, all or a substantial part of an operating natural gas district may not be disposed of without the approval of the Department of Commerce. If the sale is approved by the Department of Commerce, the district shall repay the State the lesser of the amount of any capital grant made by the State or one-half of the amount of the proceeds.

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a natural gas system. The district also may contract for the maintenance, operation, or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties.

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances, or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government.

(10) To develop and make data, plans, information, surveys, and studies of natural gas systems within the territorial jurisdiction of the district and to prepare and make recommendations in regard thereto.

(11) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations. This entry shall not be deemed a trespass except that the district shall be liable for any actual and consequential damages resulting from the entry.

(12) To develop and carry out demonstration projects.

(13) To make, enter into, and perform contracts with private parties and natural gas companies with respect to the management and operation of natural gas systems.

(14) To make, enter into, and perform contracts with any public utility, railroad, or transportation company for the joint use of property or rights.

(15) To own, lease, and operate natural gas systems. These systems may also include the purchase or lease, or both, of natural gas fields and natural gas reserves within the State, and the purchase of natural gas supplies within or without the State. A district may operate that part of a gas system involving the purchase or lease, or both, of natural gas fields, natural gas reserves, and natural gas supplies, in an operating agreement, partnership or joint venture arrangement with natural gas utilities and private enterprise. The district may acquire, purchase, construct, receive, own, operate, maintain, enlarge, and improve natural gas systems and transport and sell at wholesale all or any part of its gas supply.

(16) To purchase or finance real or personal property under G.S. 160A-20.

(17) To obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source.

(18) To enter into and perform contracts and agreements with other natural gas districts, regional natural gas districts, or units of local government pursuant to the provisions of Part 1 of Article 20 of Chapter 160A of the General Statutes and to enter into contracts and agreements with private natural gas companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a natural gas system outside the service area of the district. A district may provide service or contract for the providing of service to a city geographically located within a district, notwithstanding that the city did not join the district pursuant to G.S. 160A-633(a) or G.S. 160A-642.

(19) Except as restricted by covenants in bonds, notes, security interests, or trust certificates, to set in its sole discretion rates, fees, and charges for use of its natural gas system in accordance with G.S. 160A-647.

(20) To do all related things necessary to carry out its purpose and to exercise the powers granted to the district.

(21) To issue revenue bonds and notes and to incur other obligations as authorized by this Article.

"§ 160A-638. Fiscal accountability.

A district is a public authority subject to the provisions of Chapter 159 of the General Statutes.

"§ 160A-639. Funds.

The establishment and operation of a district is a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the district. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the district. A district may apply for grants from the State of North Carolina, or from the United States or any department, agency, or

instrumentality thereof. The Department of Commerce may allocate to a district any funds appropriated for natural gas.

"§ 160A-640. Effect on existing franchises and operations.

Creation of the district does not affect any existing franchises granted by any unit of local government. Those existing franchises shall continue in full force and effect until legally terminated, and all ordinances and resolutions of the unit of local government regulating local natural gas systems shall continue in full force and effect unless superseded by rules of the district. This superseding, if any, may occur only on the basis of prior mutual agreement between the district and the respective unit of local government.

"§ 160A-641. Termination of district.

The Board of Trustees, after providing for the continued availability of natural gas service to its customers, if any, may terminate the existence of the district at any time when it has no outstanding indebtedness. The Board of Trustees shall file notification of the termination with the Secretary of State.

"§ 160A-642. Joinder of county or city.

(a) Whenever a district has been organized under the provisions of this Article, a county as defined in G.S. 160A-332(a) or a city within that county, or a city that did not join in the organization of a district but is geographically located within the district may, with the consent of the district as evidenced by a resolution adopted by a majority of the members of the Board of Trustees of the district, join the district.

(b) A county or city desiring to join an existing district shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in G.S. 160A-633. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing.

(c) A certified copy of each resolution signifying the desire of a county or city to join an existing district, together with proof of publication of the notice of hearing on the resolution, and a certified copy of the resolution of the Board of Trustees of the district consenting to the joining shall be filed with the Secretary of State. If the Secretary of State finds that the resolutions conform to the provisions of this Article and that the notices of hearing were properly published, the Secretary of State shall file such resolutions and proofs of publication in the office of the Secretary of State, shall issue a certificate of joinder, and shall record the certificate in the appropriate book of record. The issuance of the certificate shall be conclusive evidence of the joinder of the county or city to the district.

"§ 160A-643. Bonds and notes authorized.

The district may issue revenue bonds and revenue bond anticipation notes pursuant to the provisions of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, and Article 9 of Chapter 159 for the purposes provided in this Article. If and to the extent any provisions of Articles 5 and 9 of Chapter 159 are inconsistent with the provisions of this Article, the provisions of this Article shall be controlling. A district may proceed with the issuance of bonds and notes under Articles 5 and 9 of Chapter 159 notwithstanding

that, to the extent of any inconsistency only, the district complies with the provisions of this Article and not the provisions of Articles 5 and 9 of Chapter 159.

"**§ 160A-644. Acquisition, power of eminent domain.**

(a) The district shall have continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the district.

(b) Exercise of the power of eminent domain by the district shall be as a private condemnor in accordance with Chapter 40A of the General Statutes. Notwithstanding Chapter 40A of the General Statutes, before final judgment may be entered in any action of condemnation initiated by the district, the district shall furnish proof that the board of commissioners of the county where the land is located has consented by resolution or ordinance to the taking.

"**§ 160A-645. Tax exemption.**

A district, and its property, bonds and notes, and income, are exempt from property taxes and income taxes to the same extent as if it were a city. A district is subject to gross receipts tax under G.S. 105-116.

"**§ 160A-646. Authority to fix and enforce rates.**

(a) A district may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties made applicable throughout the district for the gas services. Schedules of rents, rates, fees, charges, or penalties may vary according to classes of service. Before it establishes or revises a schedule of rents, rates, fees, charges, or penalties, the district Board of Trustees shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing.

(b) A district may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. A district may also discontinue service to any customer whose account remains delinquent for more than 30 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the district to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the person contracting for them and shall in no case be a lien upon the property or premises served.

(d) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the owner of the premises served when the property or premises are leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter."

Section 3. G.S. 105-116 reads as rewritten:

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

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

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

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

(2a) A regional natural gas district created under Article 27 of Chapter 160A of the General Statutes.

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

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

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

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

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A ~~company~~ taxpayer shall

submit a report on a form provided by the Secretary. The report shall include the ~~company's~~ taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

(1) The ~~company's~~ taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

(2) The ~~company's~~ taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under G.S. Chapter 159B or a city having an ownership share in a project established under that Chapter.

(3) The amount of and price paid by the ~~company~~ taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.

(4) For an electric power ~~company or~~ company, a natural gas company, or a regional natural gas district, the ~~company's~~ entity's gross receipts from the sale within each city of the commodities and services described in subsection (a).

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

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

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

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

(d) Distribution. -- Part of the taxes imposed by this section on electric power ~~companies and natural gas companies~~ companies, natural gas companies, and regional natural gas districts is distributed to cities under G.S. 105-116.1.

(e) Local Tax. -- So long as there is a distribution to cities from the tax imposed by this section, no city shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon

distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment.

(f) Gas City Exemption. -- The tax imposed by this section does not apply to the following cities that operate their own piped natural gas systems: Bessemer City, Kings Mountain, Lexington, Shelby, Greenville, Monroe, Rocky Mount, and Wilson."

Section 3.1. G.S. 105-116.1 reads as rewritten:

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

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

(1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power company, a natural gas company, a regional natural gas district, and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

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

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.

(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's adjusted 1995-96 amount and the city's 1990-91 distribution.

(d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsection (c) of this section. This amount is the total hold-harmless adjustment.

(2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.

(3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

(4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 4. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means an electric power company, a gas company, a regional natural gas district, or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. 105-120(e) or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.14(c) is amended by adding a new subdivision to read:

"(22) A regional natural gas district created pursuant to Article 27 of Chapter 160A of the General Statutes."

Section 6. G.S. 159-81(1) reads as rewritten:

"(1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, and joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, but not any other forms of local government."

Section 7. G.S. 160A-20(h) reads as rewritten:

"(h) As used in this section, the term 'unit of local government' means any of the following:

(1) A county.

(2) A city.

(3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

(4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.

(5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.

(5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995; provided that the authority granted by this section may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.

(6) A local school administrative unit (i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and (ii) whose board of education is authorized to levy a school tax.

(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.

(8) A consolidated city-county, as defined by G.S. 160B-2(1).

(9) A regional natural gas district, as defined by Article 27 of this Chapter."

Section 8. G.S. 62-3(23) is amended by adding a new sub-subdivision to read:

"k. The term 'public utility' shall not include a regional natural gas district organized and operated pursuant to Article 27 of Chapter 160A of the General Statutes."

Section 9. G.S. 62-50(g) reads as rewritten:

"(g) For the purpose of this section, 'gas operators' include gas utilities and gas pipeline carriers operating under a franchise from the Utilities Commission, municipal corporations operating municipally owned gas distribution systems, regional natural gas districts organized and operated pursuant to Article 27 of Chapter 160A of the General Statutes, and public housing authorities and any person operating apartment complexes or mobile home parks that distribute or submeter natural gas to their tenants. This section does not confer any other jurisdiction over municipally owned gas distribution systems, regional natural gas districts, public housing authorities or persons operating apartment complexes or mobile home parks."

Section 10. (a) Insofar as the provisions of this act are not consistent with the provisions of any other law, public or private, the provisions of this act shall be controlling.

(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to such sections or Chapters as they may be amended from time to time by the General Assembly.

(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

(d) If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

PART III.

EFFECTIVE DATES

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

EXPLANATION OF HOUSE BILL 495 (PCS):
Natural Gas

TO: Senate Finance Committee
FROM: Committee Counsel
DATE: July 23, 1997
SPONSOR: Representative Owens

House Bill 495 is intended to promote the extension of natural gas service to unserved counties by permitting public utilities to charge different rates in those counties in order to reflect the additional cost of providing service and by authorizing the creation of natural gas districts for the purpose of providing expansion into unserved areas.

The bill was discussed in the Utilities Subcommittee of Commerce. The Subcommitee adopted a proposed committee substitute. However, the full Commerce Committee did not hear the bill. The bill was withdrawn from committee and referred to finance. The proposed committee substitute before you is the proposed committee substitute the subcommittee adopted, with changes recommended by the Department of State Treasurer and changes dictated by recently ratified Senate Bill 34. (This Bill was enacted to adjust the share the cities receive from the State gross receipts tax to make the distribution more equitable).

Section 1 authorizes the Utilities Commission to establish different rates for natural gas service to counties that are substantially unserved. The Commission must find that natural gas would into become available to those counties without the rate differential. Current law prohibits unreasonable differences as to rates or service to exist between localities or between classes of service.

Section 2 authorizes the creation of regional natural gas districts. A district may be created for one or more entire counties that are totally unserved with natural gas at the time the district is created. This area constitutes the terrritorial jurisdiction and the service area of the district. A city geographically located in the county or counties that are totally unserved may also join in the organization of the district. The district's right to serve does not extend beyond its jurisdiction and service area. The district's right to serve does not prevent a public utility or municipality from providing service.

The district is created by the boards of county commissioners and the governing body of any city located in the county if the city chooses to join in the organization of the district. The governing body of the district is its board of

trustees, the membership of which is as provided in the district's articles of incorporation. Persons serving on the board of trustees may hold an elective public office as well.

The district may be terminated after the board of trustees provides for the continued availability of natural gas service to its customers, provided it has no outstanding indebtedness.

A city within the county making up the district may later join the district with the consent of the board of trustees of the district. A county totally unserved by natural gas and a city within that county may also join a district with the consent of the board of trustees.

The powers of the district include the following:

1. To purchase, construct, and operate natural gas systems.
2. To contract with private parties and natural gas companies for management and operation of natural gas systems.
3. To own, lease and operate gas systems.
4. To purchase natural gas supplies.
5. To set rates, rents, fees, charges, and penalties
6. to make surveys, soundings, drillings, and examinations.
7. To issue bonds and notes
8. To ;purchase equipment and finance it in various ways, such as installment financing.
9. To acquire property by eminent domain, with the consent of the boards of county commissioners.

The district is exempt from property taxes and income taxes to the same extent as if it were a city. However a district is subject to gross receipts taxes under G.S. 105-116. The district is allowed an annual refund of sales and use taxes to the same extent as other governmental entities. The district is subject to an annual franchise or privilege tax to the same extent as natural gas companies (3.22% of the district's taxable gross receipts from the furnishing of piped natural gas) The sale of natural gas is also subject to sales tax.

Section 6 of the bill adds "regional natural gas district" to the definition of "municipality" in the Revenue Bond Act.

Section 7 of the bill adds "regional gas district" to the definition of "unit of local government" in G.S. 160A-20. This statute allows units of local government to purchase or finance the purchase of property by installment contracts that create in the property purchased a security interest.

Sections 8 and 9 of the bill provide that regional gas districts are not regulated by the Utilities Commission but they are subject to safety oversight by the Commission.

Section 10 clarifies the statutory interpretation of the act.

The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 990
Committee Substitute Favorable 4/24/97
Third Edition Engrossed 4/29/97

Short Title: Exempt Certain Nonprofit Utilities. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED WATER OR SEWER UTILITIES FROM REGULATION BY THE UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3(23) reads as rewritten:

"(23) a. 'Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation;

2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public

for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than ~~10~~ 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for ~~10~~ 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than ~~10~~ 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such ~~10~~ 15 or more building lots, without regard to the number of actual customers connected;

3. Transporting persons or household goods by street, suburban or interurban bus or railways for the public for compensation;
4. Transporting persons or household goods by railways or motor vehicles, or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.

b. The term 'public utility' shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

c. The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.

d. The term 'public utility,' except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership ~~corporation or nonprofit water membership or consumer-owned corporations financed by the Farmers~~

~~Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer-owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation;~~ corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.

e. The term 'public utility' shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).

f. The term 'public utility' shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.

g. The term 'public utility' shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to

occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.

h. The term 'public utility' shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of the electricity supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.

i. The term 'public utility' shall not include the State, the Office of the State Controller, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.

j. The term 'public utility' shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 990
Committee Substitute Favorable 4/24/97
Third Edition Engrossed 4/29/97
Proposed Senate Committee Substitute H990-PCS2371

Short Title: Exempt Certain Nonprofit Utilities. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN NONPROFIT AND CONSUMER-OWNED WATER OR SEWER UTILITIES AND CERTAIN SMALL WATER OR SEWER UTILITIES FROM REGULATION BY THE UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3(23) reads as rewritten:

"(23) a. 'Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation;

2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than ~~10~~ 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for ~~10~~ 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than ~~10~~ 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such ~~10~~ 15 or more building lots, without regard to the number of actual customers connected;
3. Transporting persons or household goods by street, suburban or interurban bus or railways for the public for compensation;
4. Transporting persons or household goods by railways or motor vehicles, or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.

b. The term 'public utility' shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.

c. The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.

d. The term 'public utility,' except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership

~~corporation or nonprofit water membership or consumer-owned corporations financed by the Farmers Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer-owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation;~~ corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.

e. The term 'public utility' shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).

f. The term 'public utility' shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.

g. The term 'public utility' shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.

h. The term 'public utility' shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of the electricity supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.

i. The term 'public utility' shall not include the State, the Office of the State Controller, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.

j. The term 'public utility' shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies."

Section 2. Article 6 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-110.5. Commission may exempt certain nonprofit and consumer-owned water or sewer utilities.**

The Commission may exempt any water or sewer utilities owned by nonprofit membership or consumer-owned corporations from regulation under this Chapter, subject to those conditions the Commission deems appropriate, if:

(1) The members or consumer-owners of the corporation elect the governing board of the corporation pursuant to the corporation's articles of incorporation and bylaws; and

(2) The Commission finds that the organization and the quality of service of the utility are adequate to protect the public interest to the extent that additional regulation is not required by the public convenience and necessity."

Section 3. G.S. 62-300(a) is amended by adding a new subdivision to read:

"(15) One hundred dollars ($100.00) for each application for exemption filed by nonprofit and consumer-owned water or sewer utilities pursuant to G.S. 62-110.5."

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

EXPLANATION OF HOUSE BILL 990:
Exempt Certain Nonprofit Utilities (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 22, 1997
SPONSOR: Representative Church

The proposed committee substitute for **House Bill 990** does two things:

1. It provides that the Utilities Commission may exempt nonprofit and consumer-owned water or sewer utilities from regulation.
2. It increases the regulatory exemption for utilities selling water to less than ten residential customers to utilities selling water to less than 15 residential customers.

Under current law, nonprofit membership or consumer-owned corporations that supply water are exempt from regulation by the Utilities Commission if both of the following conditions are met:

- A federal financing agency exercises substantial control over and regulation of the corporation's rates and terms and conditions of service.
- The members or consumer-owners elect the governing board of the corporation.

The Utilities Commission and legislative staff recently learned, however, that no federal financing agency does, or ever has, exercised such control. Therefore, no nonprofit membership or consumer-owned corporation can possibly qualify for the exemption from regulation under the current law.

To rectify this problem, Section 1 deletes the current exemption. Section 2 provides that the Utilities Commission may exempt nonprofit and consumer-owned water or sewer utilities from regulation, subject to conditions the Commission deems appropriate, if both of the following conditions are met:

- The members or consumer-owners elect the governing board of the corporation.
- The Commission finds that the organization and quality of service of the utility are adequate to protect the public interest.

The exemption will be granted on a case-by-case basis. To obtain an exemption, a nonprofit or consumer-owned water or sewer utility would need to apply to the Commission. Section 3 imposes a $100 fee for each application for exemption filed by a nonprofit or consumer-owned water or sewer utility.

Section 1 also increases the regulatory exemption for utilities that sell water to less than ten residential customers. The exemption will now apply to those selling to less than 15 residential customers. This will match exemptions allowed by the Department of Environment, Health, and Natural Resources.

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-24-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joy Williams	Energy Div.
Jon McClure	TDA
David Simmons	ZDA, PA
Theresa Rodriguez	STAKE
Lori Cain Harris	
Karen Mundstock	Payne + Spruill
[illegible]	Moore & Van Allen
Nathan/ MJ	CCNC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-24-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Ritchey	TTA
Roger Bone	Bone Assoc / Venture Partners
Deborah Lamm	Commerce / Energy
Dan Herlach	Budget & Tax Cats
Lawrence Davis	Womble Carlyle
Samuel M. Taylor	
Bernard Allen	SOS
Kirk Calhoun	C.A.C.
Alan Miles	Bailey & Dixon LLP
Jane O. Gray	DOS
John Bowdish	Zeb Alley P.A.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7-24-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Stoffel	NC C&C Assoc
A. B. Swindell IV	BFI
Susan Harrison	WCPSS
Cam Cover	BPMHL
Lanier Winner	EGHES
Doug Chappell	State Treasurers Office
James Little	Public Staff - NCUC
Richard Whisnant	DENR
R. Rogers	DENR
Curt Williams	Gov's Office
Leighton Roper	234, PA

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Monday, July 28, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) 485 Funeral Establishments/AB.
Sequential Referral: None
Recommended Referral: None

H.B.(CS) 566 Wake Schools Development Charges
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS) 495 Natural Gas
Draft Number: PCS7354
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

H.B.(CS) 990 Exempt Certain Nonprofit Utilities
Draft Number: PCS2371
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) 225 Dry-Cleaning Solvent Cleanup Act
Draft Number: PCS4142
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

H.B.(CS #2)**568** Wake Forest Annexation

Draft Number:	PCS7358
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 6

Committee Clerk Comment: Bills taken up at 7-24-97 Meeting

Attachment #4

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Monday, August 04, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS#2)**631** Forsyth Room Tax Distribution
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: Bill taken up 7-24-97

SENATE FINANCE COMMITTEE

TUESDAY, JULY 29, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on July 29, 1997, with Senator Kerr presiding. There were 24 committee members present.

H.B. 611 - Increase Comp. For Err. Convictions

Representative Hackney was recognized to explain his H.B. 611. At the conclusion of his explanation, there were several questions from the committee members. Senator Albertson moved for a "favorable" report and the motion carried. Copy of bill, explanation and fiscal note included in the minutes.

Senator Kerr welcomed Senator William A. Purcell who is replacing Senator Conder to the Finance Committee.

H.B. 844 - Reidsville Annexation Restricted

Representative Cole was recognized to explain this bill and Senator Foxx made a motion that this bill be given a "favorable" report. The motion carried. Copy of bill included in the minutes.

H.B. 1097 - Fisheries Reform Act-2

Representative Preston was recognized to explain this bill. Senator Lee was recognized and made a motion to adopt a proposed committee substitute and the motion carried. Jeff Hudson, Staff Attorney, was recognized to explain the changes that had been made in this bill. At the conclusion of Mr. Hudson's explanation, the following were recognized to speak on the bill:

Jerry Schill, President of the North Carolina Fisheries Association, stated that they had problems with the bill.

Sheri Evans Stanton, Assistant Secretary for Natural Resources with DEHNR, spoke in support of this bill.

Mr. Dick Huffman, small commercial fisherman from Carteret County, spoke on this bill supporting parts of it and opposing some of the issues.

Jess Hawkins, North Carolina Division of Marine Fisheries, spoke on the bill.

Tom Bean, Executive Director of the North Carolina Wildlife Federation, spoke in favor of the bill.

Sandy Sands, Coastal Conservation Association of North Carolina, spoke in support of the bill that came out of the Agriculture Committee.

Senator Cochrane and Senator Phillips have amendments that will be held and discussed in Appropriations.

Senator Hoyle sent forth an amendment (#1) and Senator McDaniel sent forth an amendment (#2). These amendments change the annual SCFL fee. Dan McLawhorn with the Attorney General's Office was recognized to speak on differential fees and how these amendments will affect this bill. Senator McDaniel's amendment was adopted by the committee and there will be further discussion on the bill at a later date. Copy of bill, committee substitute, amendment and other information included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

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

H.B. 136 and H.B. 418 were pulled from the agenda for this meeting.
H.B. 1110 and H.B. 1156 were not taken up at this committee meeting.

Attachment # 1

AGENDA

SENATE FINANCE COMMITTEE

July 29, 1997 - 8:30 A.M.
Room 643

H.B. 136 - Late Video Return/Sales Tax - Rep. Weatherly

H.B. 418 - Miscellaneous Local Acts - Rep. Thompson

H.B. 611 - Increase Comp. For Err. Convictions - Rep. Hackney

H.B. 844 - Reidsville Annexation Restricted - Rep. Cole

H.B. 1097 - Fisheries Reform Act-2 - Rep. Preston

H.B. 1110 - Landscape Architects - Rep. McMahan

H.B. 1156 - March of Dimes License Plates - Rep. Morris

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 611
Committee Substitute Favorable 4/23/97
Senate Judiciary Committee Substitute Adopted 6/9/97

Short Title: Increase Comp. for Err. Conviction. (Public)

Sponsors:

Referred to: Appropriations.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES WHO HAVE RECEIVED PARDONS OF INNOCENCE, TO EXEMPT THE COMPENSATION FROM STATE INCOME TAX, AND TO PROVIDE FOR THE INDUSTRIAL COMMISSION TO HANDLE THE CLAIMS OF THOSE PERSONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-82 reads as rewritten:

"**§ 148-82. Provision for compensation.**

Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be ~~pardoned~~ granted a pardon of innocence by the Governor upon the grounds that the crime with which ~~he~~ the person was charged either was not committed at all or was not committed by ~~him,~~ that person, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by ~~him~~ the person through his or her erroneous conviction and ~~imprisonment.~~ imprisonment, provided the petition is presented within five years of the granting of the pardon."

Section 2. G.S. 148-83 reads as rewritten:

"**§ 148-83. Form, requisites and contents of petition; nature of hearing.**

Such petition shall be addressed to the ~~Department of Correction,~~ Industrial Commission, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it

may be supported by affidavits substantiating such claim. Upon its presentation the ~~Department of Correction~~ Industrial Commission shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor."

Section 3. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by ~~Parole~~ Industrial Commission; payment and amount of compensation.**

At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the ~~Parole~~ Industrial Commission finds from the evidence that the claimant ~~was pardoned~~ received a pardon of innocence for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was ~~imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the Parole Commission shall report the facts, together with his [its] conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant~~ imprisoned, the Industrial Commission shall determine the amount the claimant is entitled to be paid for the claimant's pecuniary loss and shall enter an award for that amount. The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State ~~fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of five hundred dollars ($500.00)~~ funds. The Industrial Commission shall award to the claimant an amount equal to ten thousand dollars ($10,000) for each year or the pro rata amount for the portion of each year of ~~such~~ the imprisonment actually ~~served; and~~ served, but in no event shall ~~such~~ the compensation exceed a total amount of ~~five thousand dollars ($5,000).~~ one hundred fifty thousand dollars ($150,000). The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes."

Section 4. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(12) The amount paid to the taxpayer by the State under G.S. 148-84 as compensation for pecuniary loss suffered by reason of erroneous conviction and imprisonment."

Section 5. Section 4 of this act is effective for taxable years beginning on or after January 1, 1997. The remainder of this act is effective when it becomes law and applies to persons pardoned on or after July 1, 1995.

EXPLANATION OF HOUSE BILL 611:
Increase Compensation for Erroneous Conviction (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 28, 1997
SPONSOR: Representative Hackney

House Bill 611 makes several changes to the law that allows the State to compensate people who have been erroneously convicted and imprisoned of a felony:

- It increases the amount a person may be awarded.
- It changes the agency that determines the award from the Department of Correction to the Industrial Commission.
- It provides that the petition must be presented to the Commission within five years of the granting of the pardon.
- It repeals the requirement that the Commission must find that the claimant sustained pecuniary loss through the erroneous conviction and imprisonment.
- It allows the Commission to award the amount to the claimant, rather than the Governor upon the approval of the Council of State.
- It clarifies that the amount awarded to the claimant is exempt from State income tax.

Under current law, a person who has been granted a pardon of innocence for the erroneous conviction and imprisonment of a felony may petition the State for the financial loss sustained by the person through the erroneous conviction and imprisonment. The petition is presented to the Department of Correction. At the hearing, the Department must find that the person was erroneously convicted and imprisoned and that the person sustained a financial loss because of it. The Department reports its conclusions and recommendations to the Governor. The Governor, upon the approval of the Council of State, may award the claimant the amount recommended by the Department. The Department may not award an amount that exceeds $500 for each year imprisoned and the total compensation may not exceed $5,000.

Under the bill, a person would have five years from the granting of the pardon to present a petition to the Industrial Commission for compensation from the State for the financial loss the person suffered because of an erroneous conviction and imprisonment. Upon finding that the person was granted a pardon of innocence, the Commission must determine the amount the claimant is

entitled to be paid for the claimant's pecuniary loss and must enter an award for that amount. A claimant will be entitled to an amount equal to $10,000 for each year or the pro rata amount for the portion of each year of the imprisonment. The compensation may not exceed a total amount of $150,000. The Commission must give written notice of its decision to all parties concerned. Its determination is subject to judicial review.

Section 4 of the bill clarifies that the amount awarded to a claimant is not subject to State income tax. Under current law, it is unclear whether the amount awarded to a claimant is exempt from federal income tax. Prior to 1996, section 104 of the Code excluded amounts received as damages on account of personal injuries and sickness. Last year, Congress amended this section to say that gross income does not include "the amount of damages received on account of personal physical injuries or physical sickness." Because of the 1996 federal tax law change, it is questionable whether the compensation would be taxable under federal law. To the extent the income is subject to federal income tax, it would also be subject to State income tax. Section 4 provides that to the extent the compensation is included in federal taxable income, it may be deducted for State income tax purposes.

The bill is effective when it becomes law and applies to persons pardoned on or after July 1, 1995.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 611 (3rd Edition)

SHORT TITLE: Increase Compensation for Erroneous Conviction

SPONSOR(S): Rep. Hackney and Rep. Reynolds

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	None				
EXPENDITURES	$ 95,300 (NR)				
POSITIONS:	None				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Industrial Commission

EFFECTIVE DATE: Effective when it becomes law

BILL SUMMARY: *TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES WHO HAVE RECEIVED PARDONS OF INNOCENCE, TO PROVIDE FOR THE INDUSTRIAL COMMISSION TO HANDLE THE CLAIMS OF THOSE PERSONS, AND TO PROVIDE THAT THOSE CLAIMS MUST BE BROUGHT WITHIN FIVE YEARS AND TO EXEMPT THE COMPENSATION FROM STATE INCOME TAX* Amends GS 148-82, 148-83 and 148-84 for purpose indicated in title. Compensation is set at $10,000 (now, ~~$500~~) for each year or pro rate payment for portion of year of imprisonment actually served, and total compensation may not exceed $150,000 (now, $5,000). Also specifies that either the State or the claimant can appeal the decision of the Industrial Commission to the Court of Appeals.

ASSUMPTIONS AND METHODOLOGY: GS 148-82, GS 148-83 and GS148-84 specify a claims for pecuniary loss procedure for felons who were imprisoned and then pardoned by the Governor, on the ground that the crime for which they were convicted was not committed at all or not committed by them (a "pardon of innocence"). Current law specifies that the individual can petition the Department of Correction for a hearing before the Parole Commission. This bill moves the petition/hearing to the Industrial Commission and raises the compensation (paid from the Contingency and Emergency Fund) from a maximum of $500 per year of imprisonment to $10,000 per year and from a total of $5,000 to a total of $150,000. It also specifies claims must be made within 5 years of the pardon and that compensation is exempt from state income tax.

According to the Governor's Office of Pardon and the Post Release Supervision and Parole Commission, only one individual has received a pardon of innocence in memory. That individual was incarcerated roughly 10 years and pardoned in 1995 (within the time period specified in this bill) . Their claim may be as high as $100,000 (10*10000) depending on the findings of the Industrial Commission. Under existing law, their claim would be limited to $5,000 (10*500) and would be subject to tax (assume 6%, tax due would be $300) with a net cost of $4,700. Therefore, the net cost of HB 611 is $95,300 (=$100,000-$4,700).

Because pardons of innocence are rare events, no impact is projected on the Industrial Commission.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Elisa Wolper
APPROVED BY:
DATE: July 25, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 844
Committee Substitute Favorable 4/30/97

Short Title: Reidsville Annexation Restricted. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CHARTER OF THE CITY OF REIDSVILLE TO RESTRICT ANNEXATION OF THE CITY BEYOND A LINE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Reidsville, being Chapter 957 of the Session Laws of 1989, is amended by adding a new section to read:

"Section 1.4. **Annexation Restricted.** The City may not annex under Article 4A of Chapter 160A of the General Statutes any territory west of the following line: Beginning at a point in the centerline of the Iron Works Road; said point being westerly and 400 feet perpendicular to the western right-of-way of Woolen Store Road Extended to the centerline of the Iron Works Road; thence from said point northerly about 430 feet to a point; said point being 400 feet perpendicular to and northerly from the northern right-of-way of the Iron Works Road; thence from said point in a generally northeasterly direction and being 400 feet parallel to the northern right-of-way of the Iron Works Road and Sandy Cross Road to a point said point being 400 feet perpendicular to and northwesterly from the northwestern right-of-way of Sandy Cross Road and being in the southwestern line of the Calvary Baptist Church extend northwesterly about 460 feet, thence from said point southeasterly with the extension of said line and the southwestern line of Calvary Baptist Church about 610 feet to a point, said point being the southwest corner of Calvary Baptist Church, thence from said point northeasterly with the southeastern line of Calvary Baptist Church about 410 feet to a point, said point being the southeast corner of Calvary Baptist Church, thence from said point northeasterly with said line extended

about 50 feet to the centerline of N.C. Hwy. 65 and 87, thence northwesterly with the centerline of N.C. Hwy. 65 and 87 about 760 feet to a point, thence from said point in a northeasterly direction about 450 feet to a point; said point being 400 feet perpendicular to and northeasterly from the northern right-of-way of NC Hwy. 65 and 87 and 400 feet perpendicular to and northwesterly from the northern right-of-way of Wentworth Street; thence from said point 400 feet parallel to the northern right-of-way of Wentworth Street and running in a generally northeasterly direction to a point; said point being about 200 feet east of Setliff Road and 400 feet north of Wentworth Street; thence in a northerly direction about 2100 feet to the northeast corner of lot 7 of the Setliff Glenn Subdivision (MB 28-275); said point located about 850 feet east of the cul-de-sac at the end of Setliff Road; thence northeasterly about 2030 feet to a point at the corner of the University Estates Subdivision; thence easterly about 2000 feet along the southeasterly boundary line of the University Estates Subdivision to a point near Cedar Lane which intersects the boundary of the existing Wentworth Fire District boundary line; thence northerly along the Wentworth Fire District line about 5500 feet to a point; said point being about 400 feet south of the intersection of NC 1992 and Berrymore Road; thence parallel to and 400 feet from and on the southeast side of Berrymore Road to a point; said point being on NC 14 about 400 feet southeast of the intersection of Berrymore Road and NC 14."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 6

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/23/97

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to: Finance.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT, ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH CAROLINA.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE; PERFORMANCE AUDIT

Section 1.1. This act shall be known as the "Fisheries Reform Act of 1997".

Section 1.2. The State Auditor shall conduct a performance audit, including a detailed operational review, of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources. The performance audit shall include an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of this act. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998. The Joint Legislative Commission on Seafood and Aquaculture shall review the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of this act should be implemented.

PART II. MARINE FISHERIES COMMISSION

Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part to read:

"Part 5B. Marine Fisheries Commission.

"§ 143B-289.20. Definitions.

(a) As used in this Part:

(1) 'Commission' means the Marine Fisheries Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Fisheries Director' means the Director of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply throughout this Part.

"§ 143B-289.21. Marine Fisheries Commission -- creation; purposes.

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment, Health, and Natural Resources.

(b) The functions, purposes, and duties of the Marine Fisheries Commission are to:

(1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources of the State.

(2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.

(3) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

"§ 143B-289.22. Marine Fisheries Commission -- powers and duties.

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources of the State including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.

b. Seasons for taking fish.

c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221(e).

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements and taxes prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(e) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(f) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

"§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Marine Fisheries Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Marine Fisheries Commission shall govern the following proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.

(2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources of the

State arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the marine and estuarine resources of the State, to the public health, or to private property resulting from the violation.

(2) The frequency and gravity of the violation.

(3) The cost of rectifying the damage.

(4) Whether the violation was committed willfully or intentionally.

(5) The prior record of the violator in complying or failing to comply with programs over which the Marine Fisheries Commission has regulatory authority.

(6) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment, Health, and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary may delegate his powers and duties under this section to the Fisheries Director.

"§ 143B-289.24. Marine Fisheries Commission -- members; appointment; term; oath; ethical standards; removal; compensation; staff.

(a) Members, Selection. -- The Marine Fisheries Commission shall consist of nine members appointed by the Governor as follows:

(1) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(2) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(3) One person actively connected with, and experienced as, a licensed fish dealer or in seafood processing or distribution as demonstrated by deriving at least fifty percent (50%) of annual earned income from activities involving the buying, selling, processing, or distribution of seafood landed in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(4) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(5) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(6) One person actively engaged in the sports fishing industry as demonstrated by deriving at least fifty percent (50%) of annual earned income from selling goods or services in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(7) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(8) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(9) One person who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or sports fishing industries, including the processing and distribution of seafood.

(b) Residential Qualifications. -- For purposes of providing regional representation on the Commission, the following three coastal regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties; (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of subsection (a) of this section shall be residents of one of the coastal regions of the State. The membership of the Commission shall include at least one person who is a resident of each of the three coastal regions of the State.

(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission.

(d) Terms. -- The term of office of members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (7), (8), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.

(e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

(f) Oath of Office. -- Each member of the Commission, before assuming the duties of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

(g) Ethical Standards. --

(1) Disclosure statements. -- Any person under consideration for appointment to the Commission shall provide both a financial disclosure statement and a potential bias disclosure statement to the Governor. A financial disclosure statement shall include statements of the nominee's financial interests in and related to State fishery resources use, licenses issued by the Division of

Marine Fisheries held by the nominee or any business in which the nominee has a financial interest, and uses made by the nominee or by any business in which the nominee has a financial interest of the regulated resources. A potential bias disclosure statement shall include a statement of the nominee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the management and use of the State's coastal fishery resources. Disclosure statements shall be treated as public records under Chapter 132 of the General Statutes and shall be updated on an annual basis.

(2) Voting/conflict of interest. -- A member of the Commission shall not vote on any issue before the Commission that would have a 'significant and predictable effect' on the member's financial interest. For purposes of this subdivision, 'significant and predictable effect' means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

(3) Regular attendance. -- It shall be the duty of each member of the Commission to regularly attend meetings of the Commission.

(h) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance.

(i) Office May Be Held Concurrently With Others. -- The office of member of the Marine Fisheries Commission may be held concurrently with any other elected or appointed office, as authorized by Article VI, Section 9, of the Constitution of North Carolina.

(j) Compensation. -- Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission

members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(k) Staff. -- All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department.

(l) Legal Services. -- The Attorney General shall: (i) act as attorney for the Commission; (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii) represent the Commission in any appeal or other review of any order of the Commission.

"§ 143B-289.25. Marine Fisheries Commission -- officers; organization; seal.

(a) The Governor shall appoint a member of the Commission to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve any number of consecutive terms.

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

(c) The Commission shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) The Commission may adopt a common seal and may alter it as necessary.

"§ 143B-289.26. Marine Fisheries Commission -- meetings; quorum.

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. At least three of the four quarterly meetings of the Commission shall be held in one of the coastal regions designated in G.S. 143B-289.24.

(b) Five members of the Commission shall constitute a quorum for the transaction of business.

"§ 143B-289.27. Marine Fisheries Commission Advisory Committees established; members; selection; duties.

(a) The Commission shall be assisted in the performance of its duties by four standing advisory committees and four regional advisory committees. Each standing and regional advisory committee shall consist of no more than 11 members. The Chair of the Commission shall designate one member of each advisory committee to serve as Chair of the committee. Members shall serve staggered three-year terms as determined by the Commission. The Commission shall establish other policies and procedures for standing and regional advisory committees that are consistent with those governing the Commission as set out in this Part.

(b) The Chair of the Commission shall appoint the following standing advisory committees:

(1) The Finfish Committee, which shall consider matters concerning finfish.
(2) The Crustacean Committee, which shall consider matters concerning shrimp and crabs.
(3) The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.
(4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

(c) Each standing advisory committee shall be composed of commercial and recreational fishermen, scientists, and other persons who have expertise in the matters to be considered by the advisory committee to which they are appointed. In making appointments to advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented and shall consider for appointment persons who are recommended by groups representing commercial fishing interests, recreational fishing interests, environmental protection and conservation interests, and other groups interested in coastal fisheries management.

(d) Each standing advisory committee shall review all matters referred to the committee by the Commission and shall make findings and recommendations on these matters. A standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The Commission, in the performance of its duties, shall consider all findings and recommendations submitted by standing advisory committees.

(e) The Chair of the Commission shall appoint a regional advisory committee for each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint a regional advisory committee for that part of the State that is not included in the three coastal regions. In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented.

"**§ 143B-289.28. Marine Fisheries Endowment Fund.**

(a) Recognizing the inestimable importance to the State and its people of conserving the marine and estuarine resources of the State, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its marine and estuarine resources, there is created the North Carolina Marine Fisheries Endowment Fund, the income and principal of which shall be used only for the purpose of supporting marine and estuarine resource conservation programs of the State in accordance with this section.

(b) There is created the Board of Trustees of the Marine Fisheries Endowment Fund of the Marine Fisheries Commission, with full authority over the administration of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and members shall be the Chair, Vice-Chair, and members of the Marine Fisheries Commission. The State Treasurer shall be the custodian of the Marine Fisheries

Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(c) The assets of the Marine Fisheries Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund.

(2) Any other sources specified by law.

(d) The Marine Fisheries Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Fund. In recognition of this special trust, the following limitations and restrictions are placed on expenditures from the Fund:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from the gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No expenditure or disbursement shall be made from the principal of the Marine Fisheries Endowment Fund except as otherwise provided by law.

(3) The income received and accruing from the investments of the Marine Fisheries Endowment Fund must be spent only to further the conservation of marine and estuarine resources.

(e) The Board of Trustees of the Marine Fisheries Endowment Fund may accumulate the investment income of the Fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget for the conservation and management of marine and estuarine resources. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the Fund for the purposes set out in subdivision (3) of subsection (d) above.

(f) Expenditure of the income derived from the Marine Fisheries Endowment Fund shall be made through the State budget accounts of the Marine Fisheries Commission in accordance with the provisions of the Executive Budget Act. The Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(g) The Marine Fisheries Endowment Fund and the income therefrom shall not take the place of State appropriations, but any portion of the income of the Marine Fisheries Endowment Fund available for the purpose set out in subdivision (3) of subsection (d) above shall be used to supplement other income of and appropriations for the conservation and management of marine and estuarine resources to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

"**§ 143B-289.29. Conservation Fund; Commission may accept gifts.**

(a) The Marine Fisheries Commission may accept gifts, donations, or contributions from any sources. These funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management.

These funds shall be administered by the Marine Fisheries Commission and shall be used for marine and estuarine resources management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Marine Fisheries Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources Conservation Fund that shall be made available to the Marine Fisheries Commission for conservation, protection, enhancement, preservation, and perpetuation of marine and estuarine species that may be endangered or threatened with extinction and for education about these issues. The special Conservation Fund is subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different sizes, shapes, types, or designs may be used to recognize contributions in different amounts, but no emblem shall be issued for a contribution amounting in value to less than five dollars ($5.00).

"**§ 143B-289.30. Article subject to Chapter 113.**

Nothing in this Article shall be construed to affect the jurisdictional division between the Marine Fisheries Commission and the Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter.

"**§ 143B-289.31. Jurisdictional questions.**

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment, Health, and Natural Resources and the Marine Fisheries Commission as to any duty, responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding."

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Section 3.1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.8. Coastal Habitat Protection Plans.**

(a) The Department shall coordinate the preparation of draft Coastal Habitat Protection Plans for critical fisheries habitats. The Department shall use the staff of those divisions within the Department that have jurisdiction over marine fisheries, water quality, and coastal area management in the preparation of the Coastal Habitat Protection Plans and shall request assistance from other federal and State agencies as necessary. The plans shall:

(1) Describe and classify biological systems in the habitats, including wetlands, fish spawning grounds, estuarine or aquatic endangered or threatened species, primary or secondary nursery areas, shellfish

beds, submerged aquatic vegetation (SAV) beds, and habitats in outstanding resource waters.

(2) Evaluate the function, value to coastal fisheries, status, and trends of the habitats.

(3) Identify existing and potential threats to the habitats and the impact on coastal fishing.

(4) Recommend actions to protect and restore the habitats.

(b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall each appoint two members of the commission he or she chairs to a six-member review committee. The six-member review committee, in consultation with the Department, shall review the draft Plan and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the six-member review committee, shall then be submitted to the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission, each of which shall independently consider the Plan for adoption. If any of the three commissions is unable to agree to any aspect of a Plan, the chair of each commission shall refer that aspect of the Plan to a six-member conference committee to facilitate the resolution of any differences. The six-member conference committee shall be appointed in the same manner as a six-member review committee and may include members of the six-member review committee that reviewed the Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions adopted by all three commissions. The three commissions shall review and revise each Coastal Habitat Protection Plan at least once every five years.

(c) In carrying out their powers and duties, the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall ensure, to the maximum extent practicable, that their actions are consistent with the Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and does not oblige any commission to modify any rule adopted, permit decision made, or other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan by the three commissions. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall adopt rules to implement Coastal Habitat Protection Plans in accordance with Chapter 150B of the General Statutes.

(d) If any of the three commissions concludes that another commission has taken an action that is inconsistent with a Coastal Habitat Protection Plan, that commission may request a written explanation of the action from the other commission. A commission shall provide a written explanation: (i) upon the written request of one of the other two commissions, or (ii) upon its own motion if the commission determines that it must take an action that is inconsistent with a Coastal Habitat Protection Plan.

(e) The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall report to the Joint

Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Coastal Habitat Protection Plans, including the extent to which the actions of the three commissions are consistent with the Plans, on or before 1 September of each year."

(f) The Secretary of Environment, Health, and Natural Resources shall report to the Environmental Review Commission within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission shall review each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted to the Environmental Review Commission. The Environmental Review Commission may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary."

Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-subdivision to read:

"v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

The Commission shall approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.4. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-182.1. Fishery Management Plans.**

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.22.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory Council shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fisheries Management Plan, once adopted, without the approval of the Secretary of Environment, Health, and Natural Resources.

(e) The Secretary of Environment, Health, and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. If the Secretary determines that the Division of Marine Fisheries has failed to develop or the Marine Fisheries Commission has failed to adopt a Fishery Management Plan in compliance with the Schedule, the Secretary may issue a proclamation prohibiting the taking of species to which the Plan would apply. The completion of any act within 30 days of the time specified by the Schedule constitutes compliance with the Schedule. A proclamation issued pursuant to this subsection is not subject to Article 2A of Chapter 150B of the General Statutes.

(f) The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted to the commission. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(g) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes."

Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to read:

"(12a) Optimal yield. -- The amount of fish that:

a. Will provide the greatest overall benefit to the State, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

b. Is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

c. In the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in the fishery.

(12b) Overfishing or overfished. -- A rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis."

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1. G.S. 113-187 reads as rewritten:

"**§ 113-187. Penalties for violations of Subchapter and rules.**

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a ~~Class 2~~ Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

(1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.

(2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to

shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.

(3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.

(4) Violating the provisions of a special permit or gear license issued by the Department.

(5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas."

Section 4.2. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**

(a) Any person who sells fish in violation of G.S. 113-168.4 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(b) Any person who purchases fish in violation of G.S. 113-169.3 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(c) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Secretary against any person who sells fish in violation of G.S. 113-168.4 or purchases fish in violation of G.S. 113-169.3.

(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(e) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-289.23(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to G.S. 143B-289.23(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (e) of

this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

Section 4.3. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. ~~Such~~ Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation."

Section 4.4. The Marine Fisheries Commission shall develop a Violation Points System applicable to the fishing licenses of all persons who violate marine fisheries statutes or rules. In developing this system, the Marine Fisheries Commission shall consider the recommendations made in the Final Report of the Moratorium Steering Committee and the suspension, revocation, and reissuance

procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop an implementation schedule for the Violation Points System. The Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 July 1999, on the development of the Violation Points System and the implementation schedule.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 5.1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 14A.

"Coastal and Estuarine Commercial Fishing Licenses.

"§ 113-168. Definitions.

As used in this Article:

(1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation includes taking people fishing for hire.

(2) 'Commission' means the Marine Fisheries Commission.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment, Health, and Natural Resources.

(4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) 'North Carolina resident' means a person is a resident within the meaning of G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.

(6) 'RCGL' means Recreational Commercial Gear License.

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

(8) 'SCFL' means Standard Commercial Fishing License.

"§ 113-168.1. General provisions for commercial licenses and endorsements.

(a) Duration, Fees. -- All licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license shall pay the full annual license fee at the time the applicant applies for the license regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without being licensed as required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready

at hand for inspection all currently valid licenses and endorsements required under this Article. To comply with this subsection, a person must have either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) an assignment of a SCFL authorized under this Article. A licensee or assignee shall not refuse to exhibit the licenses and endorsements upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, address, and date of birth of the licensee; the date on which the license is issued; the date on which the license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

"**§ 113-168.2. Standard Commercial Fishing License.**

(a) Requirement. -- No person shall engage in a commercial fishing operation in the coastal fishing waters without holding a Standard Commercial Fishing License issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL or RSCFL is not required to hold a SCFL or RSCFL.

(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.

(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten-dollar ($10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.

(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license

fees shall not be refunded and shall be applied to the costs of processing the application.

(e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of North Carolina shall be two thousand dollars ($2,000) or the amount charged to a North Carolina resident in the nonresident's state, whichever is lesser.

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed. The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's name and mailing address, and the duration of the assignment. A notarized copy of the assignment shall be filed with the Division. The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel. The assignment may be revoked by: (i) written notification by the assignor that the assignment has been terminated; or (ii) a determination by the Division that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(g) Transfer. -- A SCFL may be transferred:

(1) By the license holder to a member of the license holder's immediate family.

(2) By the State to the estate of the license holder upon the death of the license holder.

(3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.

(4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.

(5) Under any other circumstance authorized by rule of the Commission.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the SCFL, RSCFL, or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to

the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction.

"**§ 113-168.3. Retired Standard Commercial Fishing License.**

(a) SCFL Provisions Applicable. -- Except as provided in this section, the provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fee. -- Any person who is 65 years of age or older and who is otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an annual fee of one hundred dollars ($100.00). Proof of age shall be supplied at the time the application is made.

(c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of the RSCFL holder's fishing vessel. If the third-party purchaser is less than 65 years of age, that purchaser shall pay the fee for the SCFL set forth in G.S. 113-168.2.

(d) Assignment. -- The RSCFL shall not be assignable.

"**§ 113-168.4. Regulations concerning the sale of fish.**

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange for merchandise these fish, without holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.

(b) It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) A person who organizes a nonprofit recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a nonprofit recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars ($100.00). A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. Proceeds derived from the sale of fish may be used only for charitable purposes.

"**§ 113-168.5. License endorsements for Standard Commercial Fishing License and Retired Standard Commercial Fishing License.**

(a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.

(b) Vessel Endorsements. --

(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:

a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;

b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or

c. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.

(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel for which the required license has been properly endorsed.

(3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:

a. One dollar ($1.00) per foot for a vessel not over 18 feet in length.

b. One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.

c. Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.

d. Six dollars ($6.00) per foot for a vessel over 50 feet in length.

(4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).

(5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL,

RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in the coastal fishing waters of the State, to land menhaden in the State, or to sell menhaden from a vessel in the State without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a menhaden endorsement shall be two dollars ($2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Division shall issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.

"**§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.**

A person who is not a resident of North Carolina, who is not eligible for a SCFL under this Article, and who only seeks to engage in menhaden fishing is eligible to purchase a menhaden license for nonresidents. The fee for the menhaden license for nonresidents shall be two dollars ($2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The menhaden license for nonresidents shall be required for the mother ship to take, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden license for nonresidents must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days.

"**§ 113-169.1. Other commercial licenses and permits authorized by the Commission.**

The Commission may adopt rules to establish licenses or permits as set forth in this section. Licenses or permits shall be issued upon the payment of fees as prescribed by the Commission in its duly adopted rules at a rate to be established by the Commission. The fee rate for licenses or permits authorized under this section shall, at a minimum, be adequate to compensate the Division for the actual and administrative cost associated with the conservation and management of the fishery.

(1) Crew licenses. -- The Commission may adopt rules to establish an individual crew license for persons working aboard a vessel engaged in a commercial fishing operation at a rate not to exceed one hundred dollars ($100.00) per license.

(2) Permits. -- The Commission may adopt rules to establish permits for gear, equipment, and specialized activities at a rate not to exceed fifty dollars ($50.00) per permit. The Commission may require permits for commercial fishing operations that do not involve the use of a vessel. The Commission may require that a person obtain a special permit prior to transplanting oysters or clams.

"**§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

(a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public grounds of the State by mechanical means or for commercial use by any means without holding either a shellfish license or a shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to purchase a shellfish license without holding a SCFL or RSCFL. The license includes the privilege to sell shellfish to a licensed fish dealer.

(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City Office. Any person who is issued a shellfish license is eligible to renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a North Carolina resident: Provided, that persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's, or guardian's shellfish license.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish for commercial use from the public grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Limitation on Taking Shellfish Without a License. --

(1) A person who is not required to obtain a shellfish license under subsection (a) of this section shall not take more than:

a. One bushel of oysters per day.

b. One-half bushel of scallops per day.

c. One hundred clams per day.

(2) Two or more persons who are not required to obtain a shellfish license under subsection (a) of this section and who are using a vessel to take shellfish shall not take more than:

a. Two bushels of oysters per day.

b. One bushel of scallops per day.

c. Two hundred clams per day.

"§ 113-169.3. Licenses for fish dealers.

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application in the Morehead City Office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this article:

(1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;
(2) To sell fish to the public; or
(3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section.

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or official agency to sell fish taken or processed in connection with research or demonstration projects;
(2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;
(3) The fish are shipped to a person by a dealer from without the State;
(4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or
(5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars ($50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in oysters: $50.00;
(2) Dealing in scallops: $50.00;
(3) Dealing in clams: $50.00;
(4) Dealing in hard or soft crabs: $50.00;
(5) Dealing in shrimp, including bait: $50.00;
(6) Dealing in finfish, including bait: $50.00;

(7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: $50.00; or

(8) Consolidated license (all categories): $300.00.

Any person subject to fish dealer licensing requirements who deals in fish not included in the above categories shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this subsection. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location, expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.

(h) Application for Replacement License. -- A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.

(i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c), and the dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i). It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.

(j) Transfer Prohibited. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section.

"**§ 113-169.4. Licensing of ocean fishing piers; fees.**

(a) Every manager of an ocean fishing pier within the coastal fishing waters who charges the public a fee to fish in any manner from the pier shall secure a current and valid pier license from the Division. An application for a pier license shall disclose the names of all parties involved in the pier operations, including the owner of the property, owner of the pier if different, and all leasehold or other corporate arrangements, and all persons with a substantial financial interest in the pier.

(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license from the Division. The replacement license is issued without charge.

(c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier.

(d) The manager who secures the pier license shall be the individual with the duty of executive-level supervision of pier operations.

"**§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.**

(a) Persons aboard vessels not having their primary situs in the State that are carrying a cargo of fish taken outside the waters of the State may land or sell their catch in the State by purchasing a land or sell license as set forth in this section with respect to the vessel in question. The Commission may by rule modify the land or sell licensing procedure in order to devise an efficient and convenient procedure for licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

(b) The fee for a land or sell license for a vessel not having its primary situs in North Carolina is two hundred dollars ($200.00), or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. Persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land or sell their catch, taken outside the jurisdiction, may land or sell their catch in the State without complying with this section if the persons are in possession of a valid license from their state of residence.

"**§ 113-170. Exportation and importation of fish and equipment.**

The Commission may adopt rules governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State. These rules may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish that are native to coastal fishing waters or may thrive if introduced into these waters.

"**§ 113-170.1. Nonresidents reciprocal agreements.**

Persons who are not North Carolina residents are not entitled to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are entitled to North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions.

"**§ 113-170.2. Fraud or deception as to licenses, permits, or records.**

(a) It is unlawful for any person to give any false information or willfully to omit giving required information to the Division or any license agent when the information is material to the securing of any license or permit under this Article. It is unlawful to falsify, fraudulently alter, or counterfeit any license, permit, identification, or record to which this Article applies or otherwise practice any fraud or deception designed to evade the provisions of this Article or reasonable administrative directives made under the authority of this Article.

(b) A violation of this section is punishable by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

"**§ 113-170.3. Record-keeping requirements.**

(a) The Commission may require all licensees under this Article to keep and to exhibit upon the request of an authorized agent of the Department records and accounts as may be necessary to the equitable and efficient administration and enforcement of this Article. In addition, licensees may be required to keep additional information of a statistical nature or relating to location of catch as may be needed to determine conservation policy. Records and accounts required to be kept must be preserved for inspection for not less than three years.

(b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse to keep records and accounts as may be reasonably required. The Department may distribute forms to licensees to aid in securing compliance with its requirements, or it may inform licensees of requirements in other effective ways such as distributing memoranda and sending agents of the Department to consult with licensees who have been remiss. Detailed forms or descriptions of records, accounts, collection and inspection procedures, and the like that reasonably implement the objectives of this Article need not be embodied in rules of the Commission in order to be validly required.

(c) The following records collected and compiled by the Department shall not be considered public records within the meaning of Chapter 132 of the General Statutes, but shall be confidential and shall be used only for the equitable and efficient administration and enforcement of this Article or for determining conservation policy, and shall not be disclosed except when required by the order of a court of competent jurisdiction: all records, accounts, and reports that licensees are required by the Commission to make, keep, and exhibit pursuant to the provisions of this section, and all records, accounts, and memoranda compiled by the Department from records, accounts, and reports of licensees and from investigations and inspections, containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues, and profits; the number, capacity, capability, and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other seafood. The Department may compile statistical information in any aggregate or summary form that does not directly or indirectly disclose the identity of any licensee who is a source of the information, and any compilation of statistical information by the Department shall be a public record open to inspection and examination by any person, and may be disseminated to the public by the Department.

"**§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries resources.**

The Commission may adopt rules governing possession, transportation, and disposition of fisheries resources by all persons, including those not subject to fish dealer licensing requirements, in order that inspectors may adequately distinguish regulated coastal fisheries resources from those not so regulated and enforce the provisions of this Article equitably and efficiently. These rules may include

requirements as to giving notice, filing declarations, securing permits, marking packages, and the like.

"§ 113-170.5. Violations with respect to coastal fisheries resources.

It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in coastal fisheries resources without conforming with the provisions of this Article or of rules adopted under the authority of this Article.

"§ 113-171. Suspension, revocation, and reissuance of licenses.

(a) Upon receipt of reliable notice that a person licensed under this Article has had imposed against the person a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this Subchapter or of rules of the Commission adopted under the authority of this Subchapter, the Secretary must suspend or revoke all licenses held by the person in accordance with the terms of this section. Reliable notice includes information furnished the Secretary in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer for judgment continued are deemed convictions. The Secretary may act to suspend or revoke licenses upon the basis of any conviction in which:

(1) No notice of appeal has been given;

(2) The time for appeal has expired without an appeal having been perfected; or

(3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Secretary must initiate an administrative procedure designed to give the Secretary systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) of this section above and keep a file of all convictions reported. Upon receipt of notice of conviction, the Secretary must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Secretary must suspend all licenses issued to the licensee for a period of 10 days. In the case of third convictions, the Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from areas closed because of suspected pollution will be deemed by the Secretary to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.

(c) Where a license has been suspended or revoked, the former licensee is not eligible to apply for reissuance of license or for any additional license authorized in this Article during the suspension or revocation period. Licenses must be returned to the licensee by the Secretary or the Secretary's agents at the end of a period of suspension. Where there has been a revocation, application for reissuance of license or for an additional license may not be made until six months following the date of revocation. In such case of revocation, the eligible former licensee must satisfy the Secretary that the licensee will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and rules. Upon the application of an eligible former licensee after revocation, the Secretary, in the Secretary's discretion, may issue one license sought but not another, as deemed necessary to prevent the hazard of recurring violations of the law.

(d) Upon receiving reliable information of a licensee's conviction of a second or subsequent criminal offense covered by subsection (a) of this section, the Secretary shall promptly cause the licensee to be personally served with written notice of suspension or revocation, as the case may be. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation may be served by an inspector or other agent of the Department, must state the ground upon which it is based, and takes effect immediately upon personal service. The agent of the Secretary making service shall then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or records relating to the license as directed by the Secretary. It is unlawful for any licensee willfully to evade the personal service prescribed in this subsection.

(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final decision by the Secretary.

(f) If the Secretary refuses to reissue the license of or issue an additional license to an applicant whose license was revoked, the applicant may contest the decision by filing a petition for a contested case under G.S. 150B-23 within 20 days after the Secretary makes the decision. The Commission shall make the final agency decision in a contested case under this subsection. An applicant whose license is denied under this subsection may not reapply for the same license for at least six months.

(g) The Commission may adopt rules to provide for the disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in responsible positions of control are deemed to be individual licensees and subject to suspension and revocation requirements in regard to any applications for license they may make -- either as individuals or as persons in responsible positions of control in any corporation, partnership, or association. In the case of

individual licensees, the individual applying for a license or licensed under this Article must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under the provisions of this section, the Secretary may not consider convictions for:

(1) Offenses that occurred three years prior to the effective date of this Article; or

(2) Offenses that occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction.

"**§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.**

(a) Spotter Plane Defined. -- A 'spotter plane' is an aircraft used for aerial identification of the location of fish in coastal fishing waters so that a vessel may be directed to the fish.

(b) License. -- Before an aircraft is used as a spotter plane in a commercial fishing operation, the owner or operator of the aircraft must obtain a license for the aircraft from the Division. The fee for a license for a spotter plane is one hundred dollars ($100.00). An applicant for a license for a spotter plane shall include in the application the identity, either by boat or by company, of the specific commercial fishing operations in which the spotter plane will be used during the license year. If, during the course of the license year, the aircraft is used as a spotter plane in a commercial fishing operation that is not identified in the original license application, the owner or operator of the aircraft shall amend the license application to add the identity of the additional commercial fishing operation.

(c) Unlawful Activity. -- It shall be unlawful to:

(1) Use a spotter plane directed at food fish, except in connection with a purse seine operation authorized by a rule of the Commission.

(2) Use or permit the use of an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(3) Participate knowingly in a commercial fishing operation that uses an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(d) Violation a Misdemeanor. -- A violation of subsection (c) of this section is a Class 1 misdemeanor.

"**§ 113-172. License agents.**

(a) The Secretary shall designate license agents for the Department. At least one license agent shall be designated for each county that contains or borders on coastal fishing waters. The Secretary may designate additional license agents in any county if the Secretary determines that additional agents are needed to provide efficient service to the public. The Division and license agents designated by the Secretary under this section shall issue all licenses authorized under this Article in accordance with this Article and the rules of the Commission. The Secretary shall require license agents to enter into a contract that provides for their duties and compensation, post a bond,

and submit to reasonable inspections and audits. If a license agent violates any provision of this Article, the rules of the Commission, or the terms of the contract, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to renew a designation as a license agent and may impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

(b) License agents shall be compensated by adding a surcharge of one dollar ($1.00) to each license sold and retaining the surcharge. If more than one license is listed on a consolidated license form, the license agent shall be compensated as if a single license were sold. It is unlawful for a license agent to add more than the surcharge authorized by this section to the fee for each license sold.

"**§ 113-173. Recreational Commercial Gear License.**

(a) License Required. -- Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational quotas or limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (k) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar ($2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be

thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons."

Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this act and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A

of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that are renewed. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire 1 July 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria for determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal

fishing and protection of the environment; and any other factors the Commission determines to be relevant. The Division shall review each application for a SCFL that it receives during the application period to determine whether the applicant is eligible under the eligibility criteria established by the Commission. The Division shall issue SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

Section 5.3. The Marine Fisheries Commission shall adopt rules authorizing the use of a limited amount commercial gear for recreational fishing under a Recreational Commercial Gear License, as required by G.S. 113-173, as enacted by Section 5.1 of this act, on or before 1 July 1999.

Section 5.4. (a) G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article 14A of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act.

(b) G.S. 113-168.9(e), as recodified by subsection (a) of this section, reads as rewritten:

"(e) The owner of a vessel ~~licensed under G.S. 113-152~~ shall be eligible to purchase a vessel crab license for crabs as an alternative to the purchase of individual licenses under this section. A vessel crab license authorizes the owner of the vessel and up to two unlicensed persons serving as crew to fish for crabs from that vessel. It is unlawful for the owner of a vessel to take crabs from the coastal fishing waters of North Carolina for commercial use by any means, when unlicensed persons not authorized by the vessel crab license are on the vessel. The Secretary shall revoke a vessel crab license issued under this subsection ~~shall be revoked when~~ if the owner of the vessel or any other person using the owner's vessel is convicted of a violation under this ~~section, except for subsection (b).~~ section, other than conviction for a violation under subsection (b) of this section."

(c) All sections of Article 14 of Chapter 113 of the General Statutes other than G.S. 113-153.1 are repealed.

Section 5.5. The Marine Fisheries Commission shall adopt a Fishery Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of this act, no later than 1 January 2000.

Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S. 113-168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take crabs from the coastal fishing waters of the State for commercial use without being licensed under G.S. 113-168.9.

Section 5.7. G.S. 113-168.9, as recodified from G.S. 113-153.1 by Section 5.4 of this act, is repealed.

Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

"(2) When the transplanting is done by a dealer in accordance with the provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules; or".

Section 5.10. G.S. 113-154.1 reads as rewritten:

"**§ 113-154.1. Endorsement to sell fish.**

(a) Requirements. -- Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Marine Fisheries Commission from coastal fishing waters by any means whatever, including aquaculture operations, to sell, offer for sale, barter or exchange for merchandise such fish, without having first procured a current and valid endorsement to sell fish. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid vessel license with an endorsement to sell, or a separate endorsement to sell if no vessel is involved, at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-156.

(b) Fees. -- The annual fee for an endorsement to sell fish on a vessel license for a resident of this State is set forth in G.S. 113-152(h). The annual fee for an endorsement to sell fish when no vessel is involved for a resident of this State is fifteen dollars ($15.00) and for a nonresident of this State is one hundred dollars ($100.00) or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. The license shall be valid for the period July 1 through June 30 of a given year.

(c) Non-Vessel Endorsement Format. -- The format of an endorsement when the applicant is not seeking a vessel license shall include the name of the applicant, date of birth, expiration date of the endorsement, and any other information the Division deems necessary to accomplish the purposes of this Subchapter. The endorsement shall be issued on a card made of hard plastic or metal capable of being used to make imprints of the sale or transaction. An applicant who is applying for an endorsement on a vessel license shall comply with G.S. 113-152.

(d) Application for Non-Vessel Endorsement. -- An application for issuance or renewal of an endorsement to sell shall be filed with the Morehead City offices of the Division of Marine Fisheries or license agents authorized to sell licenses under this Article. An application shall be accompanied by the fee established in subsection (b) of this section. Applications shall not be accepted from persons ineligible to hold a license issued by the Marine Fisheries Commission, including any applicant whose endorsement is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the endorsement to sell, until the endorsement issued by the Division is received or the Division determines that the applicant is ineligible to hold an endorsement. In addition to the information required in subsection (c) of this section, the applicant shall disclose on the application a valid address, and such other information as the Division may require.

(e) Application for Replacement Non-Vessel Endorsement to Sell. -- A replacement endorsement shall only be obtained from the Morehead City offices of the Division of Marine Fisheries. The Division shall not accept an application for a replacement endorsement unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the endorsement until the replacement license has been received.

(f) Sale of Fish. -- It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of North Carolina or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-156; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-156.

(g) Recordkeeping Requirements. -- The fish dealer shall record each transaction on a form provided by the Department. The transaction form shall include the information on the endorsement to sell of the seller, the quantity of the fish, the identity of the fish dealer, and such other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Department, and to the other party of the transaction. The Department copy of each transaction from the preceding month shall be transmitted to the Department by the fish dealer on or before the tenth day of the following month.

(h) Non-Vessel Endorsement to Sell Nontransferable. -- ~~An~~ A non-vessel endorsement to sell fish issued under this section is nontransferable. It is unlawful to use ~~an~~ a non-vessel endorsement to sell issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a license to sell with the following two exceptions: (i) an individual under the age of 16 may sell fish under the license of a relative or guardian; or (ii) a license may be transferred within a single fishing operation if the person to whom it is transferred is a U.S. citizen. It is unlawful for a licensee to lend or transfer a license to sell for the purpose of circumventing the requirements of this section.

(h1) Endorsement to Sell Fish of a Vessel License Transferable. -- An endorsement to sell fish of a vessel license may be transferred to the purchaser of the vessel upon application to the Division of Marine Fisheries at the Morehead City office of the Division if the purchaser of the vessel is otherwise qualified to hold an endorsement to sell fish of a vessel license.

(i) **(See note)** Penalties. -- Any person who violates any provision of this section or any rule by the Marine Fisheries Commission to implement this section is guilty of a misdemeanor.

(1) A violation of subsections (a), (f), or (h) or a rule of the Marine Fisheries Commission implementing any of those subsections is punishable as follows:

a. For a first conviction or a subsequent conviction not described in subdivision (1)b. or c., a violation is a Class 3 misdemeanor. A fine shall be imposed of not less than fifty dollars ($50.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed two hundred fifty dollars ($250.00).

b. For a second conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than two hundred fifty dollars ($250.00) or double the value

of the fish which are the subject of the transaction, whichever is greater, not to exceed five hundred dollars ($500.00).

c. For a third or subsequent conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than five hundred dollars ($500.00) or double the value of the fish which are the subject of the transaction, whichever is greater.

(2) A violation of any other provision of this section other than subsections (a), (f), or (h), or of any rule of the Marine Fisheries Commission other than a rule implementing subsections (a), (f), or (h) of this section, is punishable under G.S. 113-135(a).

(j) Use of Fees. -- Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an endorsement to sell fish shall be applied to the cost of a fisheries data information system that compiles fisheries data obtained from the endorsement program established by G.S. 113-152 and this section or to marine fisheries programs or research projects that enhance knowledge and use of marine and estuarine resources."

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 6.1. (a) Subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session Laws, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July ~~1, 1994,~~ 1994 and ending ~~June 30, 1997,~~ 1 July 1999 under the following statutes:

(1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels, equipment, and operations; fees.

(2) G.S. 113-153.1. Crab ~~license.~~ License.

(3) G.S. 113-154. Shellfish ~~license~~ license.

(4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement to sell fish."

(b) It is the intent of the General Assembly that the moratorium imposed by the amendment made by subsection (a) of this section to subdivision (4) of subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session Laws shall apply to both non-vessel endorsements to sell fish and endorsements to sell fish of vessel licenses.

Section 6.2. Subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this act, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July 1994 and ending 1 July ~~1999~~ 2000 under ~~the following statutes:~~

~~(1) G.S. 113-152. Consolidated license for vessels, equipment, and operations; fees.~~

~~(2)~~ G.S. ~~113-153.1.~~ 113-168.9, Crab license.

~~(3) G.S. 113-154. Shellfish license.~~

~~(4) G.S. 113-154.1. Endorsement to sell fish.~~"

Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General Statutes is repealed, except that G.S. 143B-289.19 is not repealed but is recodified as G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes and reads as rewritten:

"**§ ~~143B-289.19.~~ 143B-289.40. Office of Marine Affairs -- creation.**

~~There~~ The Office of Marine Affairs is created in the Department of ~~Administration the Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

(b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

(c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this section, reads as rewritten:

"g. Create local advisory committees in accordance with the provisions of G.S. ~~143B-289.22.~~ 143B-289.42."

Section 6.4. The records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting and purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act, are transferred to the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act. All rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws, and all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.2 of this act, that have not been heretofore repealed or rescinded shall continue in effect until repealed or rescinded by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act.

Section 6.5. In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission

initially filling positions established by subdivisions (1), (2), and (3) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2001; the terms of members of the Commission initially filling positions established by subdivisions (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2000; the terms of members of the Commission initially filling positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 1999.

Section 6.6. G.S. 113-182(b) reads as rewritten:

"(b) The Marine Fisheries Commission is authorized to authorize, regulate, prohibit, prescribe, or restrict and the Department is authorized to license:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties.

(3) The possession, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all fish taken in the Atlantic Ocean out to a distance of 200 miles from the State's mean low watermark, consistent with the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., as amended. ~~when the harvest or landing of the fish is controlled by a quota imposed on the State by a federal fisheries management plan.~~"

Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

Section 6.8. All of the Coastal Habitat Protection Plans required by G.S. 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July 2003. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall make the first report on progress in developing and implementing Coastal Habitat Protection Plans, as required by G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1 September 1999. The Secretary of Environment, Health, and Natural Resources shall make the first report on progress in developing and implementing Fishery Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999.

Section 6.9. The Joint Legislative Commission on Seafood and Aquaculture shall study the establishment of a comprehensive State program to

acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, to the 1998 Regular Session of the 1997 General Assembly.

Section 6.10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 6.11. The Marine Fisheries Commission may adopt temporary rules to implement or comply with a fisheries management plan adopted by the Atlantic States Marine Fisheries Commission or an interstate fisheries management council.

Section 6.12. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 6.13. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996 Session Laws, Second Extra Session, and Section 12 of Chapter 256 of the 1997 Session Laws, reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire ~~August 1, 1997.~~ 1 July 1998."

Section 6.15. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.15 of this act are effective when this act becomes law. Sections 2.1, 4.4, 5.3, 6.3, 6.4, 6.5, 6.6, and 6.11 of this act become effective 1 September 1997. Sections 4.1 through 4.3 of this act become effective 1 September 1997 and apply to violations and offenses on or after 1 September 1997. Section 1.2 of this act is effective retroactively as of 1 March

1997. Sections 6.1 and 6.10 of this act become effective 31 July 1997. Section 6.14 of this act becomes effective 1 August 1997. Sections 3.1, 3.2, 3.3, 3.4, 3.5, 5.5, and 6.8 of this act become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6, 5.9, and 6.2 of this act become effective 1 July 1999. Section 5.6 of this act expires 1 July 2000. Section 5.7 of this act becomes effective 1 July 2000. Sections 5.1 and 5.2 of this act expire 1 September 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/23/97
Proposed Senate Committee Substitute H1097-PCS4143

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT, ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH CAROLINA.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,
The General Assembly of North Carolina enacts:

PART I. SHORT TITLE; PERFORMANCE AUDIT; STUDIES

Section 1.1. This act shall be known as the "Fisheries Reform Act of 1997".

Section 1.2. The State Auditor shall conduct a performance audit, including a detailed operational review, of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources. The performance audit shall include an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of this act. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998. The Joint Legislative Commission on Seafood and Aquaculture shall review the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of this act should be implemented.

Section 1.3. The Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to licensing coastal recreational fishing. The Joint Legislative Commission on Seafood and Aquaculture shall make specific findings as to whether a licensing system should be adopted for coastal recreational fishing and, if so, what that system should be and how it should be implemented. In conducting the study required by this section, the Joint Legislative Commission on Seafood and Aquaculture shall consider the findings and recommendations of the final report of the Fisheries Moratorium Steering Committee and the final report of the State Auditor on the performance audit of the Division of Marine Fisheries required by Section 1.2 of this act. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Section 1.4. The Joint Legislative Commission on Seafood and Aquaculture shall study issues related to the establishment of a crew license for persons working aboard a vessel engaged in the taking of fish for sale. The Joint Legislative Commission on Seafood and Aquaculture shall make a specific determination as to whether a crew license should be established. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Section 1.5. The Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to the enhancement and management of shellfish resources and shall develop a set of comprehensive recommendations for the enhancement and management of the shellfish resources of the State. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

PART II. MARINE FISHERIES COMMISSION

Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part to read:

"Part 5B. Marine Fisheries Commission.

"§ 143B-289.20. Definitions.

(a) As used in this Part:

(1) 'Commission' means the Marine Fisheries Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Fisheries Director' means the Director of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply throughout this Part.

"§ 143B-289.21. Marine Fisheries Commission -- creation; purposes.

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment, Health, and Natural Resources.

(b) The functions, purposes, and duties of the Marine Fisheries Commission are to:

(1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources of the State.

(2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.

(3) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

"§ 143B-289.22. Marine Fisheries Commission -- powers and duties.

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources of the State including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:
  a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
  b. Seasons for taking fish.
  c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221(e).

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements and taxes prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by

the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(e) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(f) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

"§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Marine Fisheries Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Marine Fisheries Commission shall govern the following proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.

(2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources of the State arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the marine and estuarine resources of the State, to the public health, or to private property resulting from the violation.

(2) The frequency and gravity of the violation.

(3) The cost of rectifying the damage.

(4) Whether the violation was committed willfully or intentionally.

(5) The prior record of the violator in complying or failing to comply with programs over which the Marine Fisheries Commission has regulatory authority.

(6) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty

Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment, Health, and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary may delegate his powers and duties under this section to the Fisheries Director.

"§ 143B-289.24. Marine Fisheries Commission -- members; appointment; term; oath; ethical standards; removal; compensation; staff.

(a) Members, Selection. -- The Marine Fisheries Commission shall consist of nine members appointed by the Governor as follows:

(1) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(2) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the

criteria of this subdivision may be appointed under this subdivision.

(3) One person actively connected with, and experienced as, a licensed fish dealer or in seafood processing or distribution as demonstrated by deriving at least fifty percent (50%) of annual earned income from activities involving the buying, selling, processing, or distribution of seafood landed in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(4) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(5) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(6) One person actively engaged in the sports fishing industry as demonstrated by deriving at least fifty percent (50%) of annual earned income from selling goods or services in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(7) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(8) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(9) One person who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or sports fishing industries, including the processing and distribution of seafood.

(b) Residential Qualifications. -- For purposes of providing regional representation on the Commission, the following three coastal regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of subsection (a) of this section shall be residents of one of the coastal regions of the

State. The membership of the Commission shall include at least one person who is a resident of each of the three coastal regions of the State.

(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission.

(d) Terms. -- The term of office of members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (7), (8), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.

(e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

(f) Oath of Office. -- Each member of the Commission, before assuming the duties of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

(g) Ethical Standards. --

(1) Disclosure statements. -- Any person under consideration for appointment to the Commission shall provide both a financial disclosure statement and a potential bias disclosure statement to the Governor. A financial disclosure statement shall include statements of the nominee's financial interests in and related to State fishery resources use, licenses issued by the Division of Marine Fisheries held by the nominee or any business in which the nominee has a financial interest, and uses made by the nominee or by any business in which the nominee has a financial interest of the regulated resources. A potential bias disclosure statement shall include a statement of the nominee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the management and use of the State's coastal fishery resources. Disclosure statements shall be treated as public records under Chapter 132 of the General Statutes and shall be updated on an annual basis.

(2) Voting/conflict of interest. -- A member of the Commission shall not vote on any issue before the Commission that would have a 'significant and predictable effect' on the member's financial interest. For purposes of this subdivision, 'significant and predictable effect' means there is or may be a close causal link between the decision of the Commission and an expected

disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

(3) Regular attendance. -- It shall be the duty of each member of the Commission to regularly attend meetings of the Commission.

(h) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance.

(i) Office May Be Held Concurrently With Others. -- The office of member of the Marine Fisheries Commission may be held concurrently with any other elected or appointed office, as authorized by Article VI, Section 9, of the Constitution of North Carolina.

(j) Compensation. -- Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(k) Staff. -- All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department.

(l) Legal Services. -- The Attorney General shall: (i) act as attorney for the Commission; (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii) represent the Commission in any appeal or other review of any order of the Commission.

"**§ 143B-289.25. Marine Fisheries Commission -- officers; organization; seal.**

(a) The Governor shall appoint a member of the Commission to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve any number of consecutive terms.

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the

Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

(c) The Commission shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) The Commission may adopt a common seal and may alter it as necessary.

"§ 143B-289.26. Marine Fisheries Commission -- meetings; quorum.

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. At least three of the four quarterly meetings of the Commission shall be held in one of the coastal regions designated in G.S. 143B-289.24.

(b) Five members of the Commission shall constitute a quorum for the transaction of business.

"§ 143B-289.27. Marine Fisheries Commission Advisory Committees established; members; selection; duties.

(a) The Commission shall be assisted in the performance of its duties by four standing advisory committees and four regional advisory committees. Each standing and regional advisory committee shall consist of no more than 11 members. The Chair of the Commission shall designate one member of each advisory committee to serve as Chair of the committee. Members shall serve staggered three-year terms as determined by the Commission. The Commission shall establish other policies and procedures for standing and regional advisory committees that are consistent with those governing the Commission as set out in this Part.

(b) The Chair of the Commission shall appoint the following standing advisory committees:

(1) The Finfish Committee, which shall consider matters concerning finfish.

(2) The Crustacean Committee, which shall consider matters concerning shrimp and crabs.

(3) The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.

(4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

(c) Each standing advisory committee shall be composed of commercial and recreational fishermen, scientists, and other persons who have expertise in the matters to be considered by the advisory committee to which they are appointed. In making appointments to advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented and shall consider for appointment persons who are recommended by groups representing commercial fishing interests, recreational fishing interests, environmental protection

and conservation interests, and other groups interested in coastal fisheries management.

(d) Each standing advisory committee shall review all matters referred to the committee by the Commission and shall make findings and recommendations on these matters. A standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The Commission, in the performance of its duties, shall consider all findings and recommendations submitted by standing advisory committees.

(e) The Chair of the Commission shall appoint a regional advisory committee for each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint a regional advisory committee for that part of the State that is not included in the three coastal regions. In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented.

"**§ 143B-289.28. Marine Fisheries Endowment Fund.**

(a) Recognizing the inestimable importance to the State and its people of conserving the marine and estuarine resources of the State, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its marine and estuarine resources, there is created the North Carolina Marine Fisheries Endowment Fund, the income and principal of which shall be used only for the purpose of supporting marine and estuarine resource conservation programs of the State in accordance with this section.

(b) There is created the Board of Trustees of the Marine Fisheries Endowment Fund of the Marine Fisheries Commission, with full authority over the administration of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and members shall be the Chair, Vice-Chair, and members of the Marine Fisheries Commission. The State Treasurer shall be the custodian of the Marine Fisheries Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(c) The assets of the Marine Fisheries Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund.

(2) Any other sources specified by law.

(d) The Marine Fisheries Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Fund. In recognition of this special trust, the following limitations and restrictions are placed on expenditures from the Fund:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from the gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No expenditure or disbursement shall be made from the principal of the Marine Fisheries Endowment Fund except as otherwise provided by law.

(3) The income received and accruing from the investments of the Marine Fisheries Endowment Fund must be spent only to further the conservation of marine and estuarine resources.

(e) The Board of Trustees of the Marine Fisheries Endowment Fund may accumulate the investment income of the Fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget for the conservation and management of marine and estuarine resources. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the Fund for the purposes set out in subdivision (3) of subsection (d) above.

(f) Expenditure of the income derived from the Marine Fisheries Endowment Fund shall be made through the State budget accounts of the Marine Fisheries Commission in accordance with the provisions of the Executive Budget Act. The Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(g) The Marine Fisheries Endowment Fund and the income therefrom shall not take the place of State appropriations, but any portion of the income of the Marine Fisheries Endowment Fund available for the purpose set out in subdivision (3) of subsection (d) above shall be used to supplement other income of and appropriations for the conservation and management of marine and estuarine resources to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

"**§ 143B-289.29. Conservation Fund; Commission may accept gifts.**

(a) The Marine Fisheries Commission may accept gifts, donations, or contributions from any sources. These funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management. These funds shall be administered by the Marine Fisheries Commission and shall be used for marine and estuarine resources management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Marine Fisheries Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources Conservation Fund that shall be made available to the Marine Fisheries Commission for conservation, protection, enhancement, preservation, and perpetuation of marine and estuarine species that may be endangered or threatened with extinction and for education about these issues. The special Conservation Fund is subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different sizes, shapes, types, or designs may be used to recognize contributions in different amounts, but no emblem shall be issued for a contribution amounting in value to less than five dollars ($5.00).

"**§ 143B-289.30. Article subject to Chapter 113.**

Nothing in this Article shall be construed to affect the jurisdictional division between the Marine Fisheries Commission and the Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter.

"**§ 143B-289.31. Jurisdictional questions.**

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment, Health, and Natural Resources and the Marine Fisheries Commission as to any duty, responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding."

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Section 3.1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.8. Coastal Habitat Protection Plans.**

(a) The Department shall coordinate the preparation of draft Coastal Habitat Protection Plans for critical fisheries habitats. The Department shall use the staff of those divisions within the Department that have jurisdiction over marine fisheries, water quality, and coastal area management in the preparation of the Coastal Habitat Protection Plans and shall request assistance from other federal and State agencies as necessary. The plans shall:

(1) Describe and classify biological systems in the habitats, including wetlands, fish spawning grounds, estuarine or aquatic endangered or threatened species, primary or secondary nursery areas, shellfish beds, submerged aquatic vegetation (SAV) beds, and habitats in outstanding resource waters.

(2) Evaluate the function, value to coastal fisheries, status, and trends of the habitats.

(3) Identify existing and potential threats to the habitats and the impact on coastal fishing.

(4) Recommend actions to protect and restore the habitats.

(b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall each appoint two members of the commission he or she chairs to a six-member review committee. The six-member review committee, in consultation with the Department, shall review the draft Plan and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the six-member review committee, shall then be submitted to the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries

Commission, each of which shall independently consider the Plan for adoption. If any of the three commissions is unable to agree to any aspect of a Plan, the chair of each commission shall refer that aspect of the Plan to a six-member conference committee to facilitate the resolution of any differences. The six-member conference committee shall be appointed in the same manner as a six-member review committee and may include members of the six-member review committee that reviewed the Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions adopted by all three commissions. The three commissions shall review and revise each Coastal Habitat Protection Plan at least once every five years.

(c) In carrying out their powers and duties, the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall ensure, to the maximum extent practicable, that their actions are consistent with the Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and does not oblige any commission to modify any rule adopted, permit decision made, or other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan by the three commissions. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall adopt rules to implement Coastal Habitat Protection Plans in accordance with Chapter 150B of the General Statutes.

(d) If any of the three commissions concludes that another commission has taken an action that is inconsistent with a Coastal Habitat Protection Plan, that commission may request a written explanation of the action from the other commission. A commission shall provide a written explanation: (i) upon the written request of one of the other two commissions, or (ii) upon its own motion if the commission determines that it must take an action that is inconsistent with a Coastal Habitat Protection Plan.

(e) The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Coastal Habitat Protection Plans, including the extent to which the actions of the three commissions are consistent with the Plans, on or before 1 September of each year."

(f) The Secretary of Environment, Health, and Natural Resources shall report to the Environmental Review Commission within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission shall review each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted to the Environmental Review Commission. The Environmental Review Commission may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary."

Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-subdivision to read:

"v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

The Commission shall approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.4. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-182.1. Fishery Management Plans.**

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.22.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory Council shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fisheries Management Plan, once adopted, without the approval of the Secretary of Environment, Health, and Natural Resources.

(e) The Secretary of Environment, Health, and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. If the Secretary determines that the Division of Marine Fisheries has failed to develop or the Marine Fisheries Commission has failed to adopt a Fishery Management Plan in compliance with the Schedule, the Secretary may issue a proclamation prohibiting the taking of species to which the Plan would apply. The completion of any act within 30 days of the time specified by the Schedule constitutes compliance with the Schedule. A proclamation issued pursuant to this subsection is not subject to Article 2A of Chapter 150B of the General Statutes.

(f) The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted to the commission. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(g) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes."

Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to read:

"(12a) Optimal yield. -- The amount of fish that:

a. Will provide the greatest overall benefit to the State, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

b. Is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

c. In the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in the fishery.

(12b) Overfishing or overfished. -- A rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis."

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1. G.S. 113-187 reads as rewritten:

"**§ 113-187. Penalties for violations of Subchapter and rules.**

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a ~~Class 2~~ Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

(1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.

(2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.

(3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.

(4) Violating the provisions of a special permit or gear license issued by the Department.

(5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas."

Section 4.2. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**

(a) Any person who sells fish in violation of G.S. 113-168.4 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(b) Any person who purchases fish in violation of G.S. 113-169.3 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(c) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Secretary against any person who sells fish in violation of G.S. 113-168.4 or purchases fish in violation of G.S. 113-169.3.

(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(e) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-289.23(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to G.S. 143B-289.23(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (e) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

Section 4.3. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of

the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. ~~Such~~ Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation."

Section 4.4. The Marine Fisheries Commission shall develop a Violation Points System applicable to the fishing licenses of all persons who violate marine fisheries statutes or rules. In developing this system, the Marine Fisheries Commission shall consider the recommendations made in the Final Report of the Moratorium Steering Committee and the suspension, revocation, and reissuance procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop an implementation schedule for the Violation Points System. The Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 July 1999, on the development of the Violation Points System and the implementation schedule.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 5.1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 14A.

"Coastal and Estuarine Commercial Fishing Licenses.

"**§ 113-168. Definitions.**

As used in this Article:

(1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation includes taking people fishing for hire.

(2) 'Commission' means the Marine Fisheries Commission.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment, Health, and Natural Resources.

(4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) 'North Carolina resident' means a person is a resident within the meaning of G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.

(6) 'RCGL' means Recreational Commercial Gear License.

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

(8) 'SCFL' means Standard Commercial Fishing License.

"§ 113-168.1. General provisions for commercial licenses and endorsements.

(a) Duration, Fees. -- All licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license shall pay the full annual license fee at the time the applicant applies for the license regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without being licensed as required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready at hand for inspection all valid licenses and endorsements required under this Article. To comply with this subsection, a person must have either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) an assignment of a SCFL authorized under this Article. A licensee or assignee shall not refuse to exhibit the licenses and endorsements upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, address, and date of birth of the licensee; the date on which

the license is issued; the date on which the license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

"**§ 113-168.2. Standard Commercial Fishing License.**

(a) Requirement. -- No person shall engage in a commercial fishing operation in the coastal fishing waters without holding a Standard Commercial Fishing License issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL or RSCFL is not required to hold a SCFL or RSCFL.

(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.

(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten-dollar ($10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.

(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application.

(e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of North Carolina shall be two thousand dollars ($2,000) or the amount charged to a North Carolina resident in the nonresident's state, whichever is lesser.

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed. The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the

assignee's name and mailing address, and the duration of the assignment. A notarized copy of the assignment shall be filed with the Division. The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel. The assignment may be revoked by: (i) written notification by the assignor that the assignment has been terminated; or (ii) a determination by the Division that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(g) Transfer. -- A SCFL may be transferred:

(1) By the license holder to a member of the license holder's immediate family.

(2) By the State to the estate of the license holder upon the death of the license holder.

(3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.

(4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.

(5) Under any other circumstance authorized by rule of the Commission.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the SCFL, RSCFL, or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction.

"**§ 113-168.3. Retired Standard Commercial Fishing License.**

(a) SCFL Provisions Applicable. -- Except as provided in this section, the provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fee. -- Any person who is 65 years of age or older and who is otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an annual fee of one hundred dollars ($100.00). Proof of age shall be supplied at the time the application is made.

(c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of the RSCFL holder's fishing vessel. If the third-party purchaser is less

than 65 years of age, that purchaser shall pay the fee for the SCFL set forth in G.S. 113-168.2.

(d) Assignment. -- The RSCFL shall not be assignable.

"§ 113-168.4. Regulations concerning the sale of fish.

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange for merchandise these fish, without holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.

(b) It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) A person who organizes a nonprofit recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a nonprofit recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars ($100.00). A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. Proceeds derived from the sale of fish may be used only for charitable purposes.

"§ 113-168.5. License endorsements for Standard Commercial Fishing License and Retired Standard Commercial Fishing License.

(a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.

(b) Vessel Endorsements. --

(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:

a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;

b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or

c. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.

(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel for which the required license has been properly endorsed.

(3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:

a. One dollar ($1.00) per foot for a vessel not over 18 feet in length.

b. One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.

c. Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.

d. Six dollars ($6.00) per foot for a vessel over 50 feet in length.

(4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).

(5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL, RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in the coastal fishing waters of the State, to land menhaden in the State, or to sell menhaden from a vessel in the State without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a menhaden endorsement shall be two dollars ($2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Division shall issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.

"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.

A person who is not a resident of North Carolina, who is not eligible for a SCFL under this Article, and who only seeks to engage in menhaden fishing is eligible to purchase a menhaden license for nonresidents. The fee for the menhaden license for nonresidents shall be two dollars ($2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The menhaden license for nonresidents shall be required for the mother ship to take, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden license for nonresidents must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days.

"§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.

The Commission may adopt rules to establish permits for gear, equipment, and specialized activities, including commercial fishing operations that do not involve the use of a vessel and transplanting oysters or clams. The Commission shall establish a fee for each permit in an amount that compensates the Division for the actual administrative costs associated with the permit but that does not exceed fifty dollars ($50.00) per permit.

"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.

(a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public grounds of the State by mechanical means or for commercial use by any means without holding either a shellfish license or a shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to purchase a shellfish license without holding a SCFL or RSCFL. The license includes the privilege to sell shellfish to a licensed fish dealer.

(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City Office. Any person who is issued a shellfish license is eligible to

renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a resident of North Carolina.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish for commercial use from the public grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Taking and Selling Shellfish Without a License. -- Persons under the age of 18 years of age may take and sell shellfish from the public or private grounds of the State during the period from May 15 through September 1 of each year without holding a shellfish license under this section.

(i) Taking Shellfish Without a License for Personal Use. --

(1) A person may take shellfish for personal use without obtaining a license under this section in quantities up to:

a. One bushel of oysters per day.

b. One-half bushel of scallops per day.

c. One hundred clams per day.

(2) Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:

a. Two bushels of oysters per day.

b. One bushel of scallops per day.

c. Two hundred clams per day.

"§ 113-169.3. Licenses for fish dealers.

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application in the Morehead City Office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this article:

(1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;

(2) To sell fish to the public; or

(3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section.

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or

official agency to sell fish taken or processed in connection with research or demonstration projects;

(2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;

(3) The fish are shipped to a person by a dealer from without the State;

(4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or

(5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars ($50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in oysters: $50.00;

(2) Dealing in scallops: $50.00;

(3) Dealing in clams: $50.00;

(4) Dealing in hard or soft crabs: $50.00;

(5) Dealing in shrimp, including bait: $50.00;

(6) Dealing in finfish, including bait: $50.00;

(7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: $50.00; or

(8) Consolidated license (all categories): $300.00.

Any person subject to fish dealer licensing requirements who deals in fish not included in the above categories shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this subsection. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location, expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.

(h) Application for Replacement License. -- A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.

(i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c), and the dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i). It is unlawful for any person to

purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.

(j) Transfer Prohibited. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section.

"§ 113-169.4. Licensing of ocean fishing piers; fees.

(a) The owner or operator of an ocean fishing pier within the coastal fishing waters who charges the public a fee to fish in any manner from the pier shall secure a current and valid pier license from the Division. An application for a pier license shall disclose the names of all parties involved in the pier operations, including the owner of the property, owner of the pier if different, and all leasehold or other corporate arrangements, and all persons with a substantial financial interest in the pier.

(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license from the Division. The replacement license is issued without charge.

(c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier.

(d) The manager who secures the pier license shall be the individual with the duty of executive-level supervision of pier operations.

"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.

(a) Persons aboard vessels not having their primary situs in the State that are carrying a cargo of fish taken outside the waters of the State may land or sell their catch in the State by purchasing a land or sell license as set forth in this section with respect to the vessel in question. The Commission may by rule modify the land or sell licensing procedure in order to devise an efficient and convenient procedure for licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

(b) The fee for a land or sell license for a vessel not having its primary situs in North Carolina is two hundred dollars ($200.00), or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. Persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land or sell their catch, taken outside the jurisdiction, may land or sell their catch in the State without complying with this section if the persons are in possession of a valid license from their state of residence.

"§ 113-170. Exportation and importation of fish and equipment.

The Commission may adopt rules governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State. These rules may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish that are native to coastal fishing waters or may thrive if introduced into these waters.

"**§ 113-170.1. Nonresidents reciprocal agreements.**

Persons who are not North Carolina residents are not entitled to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are entitled to North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions.

"**§ 113-170.2. Fraud or deception as to licenses, permits, or records.**

(a) It is unlawful for any person to give any false information or willfully to omit giving required information to the Division or any license agent when the information is material to the securing of any license or permit under this Article. It is unlawful to falsify, fraudulently alter, or counterfeit any license, permit, identification, or record to which this Article applies or otherwise practice any fraud or deception designed to evade the provisions of this Article or reasonable administrative directives made under the authority of this Article.

(b) A violation of this section is punishable by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

"**§ 113-170.3. Record-keeping requirements.**

(a) The Commission may require all licensees under this Article to keep and to exhibit upon the request of an authorized agent of the Department records and accounts as may be necessary to the equitable and efficient administration and enforcement of this Article. In addition, licensees may be required to keep additional information of a statistical nature or relating to location of catch as may be needed to determine conservation policy. Records and accounts required to be kept must be preserved for inspection for not less than three years.

(b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse to keep records and accounts as may be reasonably required. The Department may distribute forms to licensees to aid in securing compliance with its requirements, or it may inform licensees of requirements in other effective ways such as distributing memoranda and sending agents of the Department to consult with licensees who have been remiss. Detailed forms or descriptions of records, accounts, collection and inspection procedures, and the like that reasonably implement the objectives of this Article need not be embodied in rules of the Commission in order to be validly required.

(c) The following records collected and compiled by the Department shall not be considered public records within the meaning of Chapter 132 of the General Statutes, but shall be confidential and shall be used only for the equitable and efficient administration and enforcement of this Article or for determining conservation policy, and shall not be disclosed except when required by the order of a court of competent jurisdiction: all records, accounts, and reports that licensees are required

by the Commission to make, keep, and exhibit pursuant to the provisions of this section, and all records, accounts, and memoranda compiled by the Department from records, accounts, and reports of licensees and from investigations and inspections, containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues, and profits; the number, capacity, capability, and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other seafood. The Department may compile statistical information in any aggregate or summary form that does not directly or indirectly disclose the identity of any licensee who is a source of the information, and any compilation of statistical information by the Department shall be a public record open to inspection and examination by any person, and may be disseminated to the public by the Department.

"§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries resources.

The Commission may adopt rules governing possession, transportation, and disposition of fisheries resources by all persons, including those not subject to fish dealer licensing requirements, in order that inspectors may adequately distinguish regulated coastal fisheries resources from those not so regulated and enforce the provisions of this Article equitably and efficiently. These rules may include requirements as to giving notice, filing declarations, securing permits, marking packages, and the like.

"§ 113-170.5. Violations with respect to coastal fisheries resources.

It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in coastal fisheries resources without conforming with the provisions of this Article or of rules adopted under the authority of this Article.

"§ 113-171. Suspension, revocation, and reissuance of licenses.

(a) Upon receipt of reliable notice that a person licensed under this Article has had imposed against the person a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this Subchapter or of rules of the Commission adopted under the authority of this Subchapter, the Secretary must suspend or revoke all licenses held by the person in accordance with the terms of this section. Reliable notice includes information furnished the Secretary in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer for judgment continued are deemed convictions. The Secretary may act to suspend or revoke licenses upon the basis of any conviction in which:

(1) No notice of appeal has been given;

(2) The time for appeal has expired without an appeal having been perfected; or

(3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Secretary must initiate an administrative procedure designed to give the Secretary systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) of this section above and keep a file of all convictions reported. Upon receipt of notice of conviction, the Secretary must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Secretary must suspend all licenses issued to the licensee for a period of 10 days. In the case of third convictions, the Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from areas closed because of suspected pollution will be deemed by the Secretary to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.

(c) Where a license has been suspended or revoked, the former licensee is not eligible to apply for reissuance of license or for any additional license authorized in this Article during the suspension or revocation period. Licenses must be returned to the licensee by the Secretary or the Secretary's agents at the end of a period of suspension. Where there has been a revocation, application for reissuance of license or for an additional license may not be made until six months following the date of revocation. In such case of revocation, the eligible former licensee must satisfy the Secretary that the licensee will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and rules. Upon the application of an eligible former licensee after revocation, the Secretary, in the Secretary's discretion, may issue one license sought but not another, as deemed necessary to prevent the hazard of recurring violations of the law.

(d) Upon receiving reliable information of a licensee's conviction of a second or subsequent criminal offense covered by subsection (a) of this section, the Secretary shall promptly cause the licensee to be personally served with written notice of suspension or revocation, as the case may be. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation may be served by an inspector or other agent of the Department, must state the ground upon which it is based, and takes effect immediately upon personal service. The agent of the Secretary making service shall then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or

records relating to the license as directed by the Secretary. It is unlawful for any licensee willfully to evade the personal service prescribed in this subsection.

(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final decision by the Secretary.

(f) If the Secretary refuses to reissue the license of or issue an additional license to an applicant whose license was revoked, the applicant may contest the decision by filing a petition for a contested case under G.S. 150B-23 within 20 days after the Secretary makes the decision. The Commission shall make the final agency decision in a contested case under this subsection. An applicant whose license is denied under this subsection may not reapply for the same license for at least six months.

(g) The Commission may adopt rules to provide for the disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in responsible positions of control are deemed to be individual licensees and subject to suspension and revocation requirements in regard to any applications for license they may make -- either as individuals or as persons in responsible positions of control in any corporation, partnership, or association. In the case of individual licensees, the individual applying for a license or licensed under this Article must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under the provisions of this section, the Secretary may not consider convictions for:

(1) Offenses that occurred three years prior to the effective date of this Article; or

(2) Offenses that occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction.

"**§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.**

(a) Spotter Plane Defined. -- A 'spotter plane' is an aircraft used for aerial identification of the location of fish in coastal fishing waters so that a vessel may be directed to the fish.

(b) License. -- Before an aircraft is used as a spotter plane in a commercial fishing operation, the owner or operator of the aircraft must obtain a license for the aircraft from the Division. The fee for a license for a spotter plane is one hundred dollars ($100.00). An applicant for a license for a spotter plane shall include in the application the identity, either by boat or by company, of the specific commercial fishing operations in which the spotter plane will be used during the license year. If, during the course of the license year, the aircraft is used as a spotter plane in a commercial fishing operation that is not identified in the original license application, the owner or operator of the aircraft shall amend the license application to add the identity of the additional commercial fishing operation.

(c) Unlawful Activity. -- It shall be unlawful to:

(1) Use a spotter plane directed at food fish, except in connection with a purse seine operation authorized by a rule of the Commission.

(2) Use or permit the use of an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(3) Participate knowingly in a commercial fishing operation that uses an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(d) Violation a Misdemeanor. -- A violation of subsection (c) of this section is a Class 1 misdemeanor.

"**§ 113-172. License agents.**

(a) The Secretary shall designate license agents for the Department. At least one license agent shall be designated for each county that contains or borders on coastal fishing waters. The Secretary may designate additional license agents in any county if the Secretary determines that additional agents are needed to provide efficient service to the public. The Division and license agents designated by the Secretary under this section shall issue licenses authorized under this Article in accordance with this Article and the rules of the Commission. The Secretary shall require license agents to enter into a contract that provides for their duties and compensation, post a bond, and submit to reasonable inspections and audits. If a license agent violates any provision of this Article, the rules of the Commission, or the terms of the contract, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to renew a designation as a license agent and may impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

(b) License agents shall be compensated by adding a surcharge of one dollar ($1.00) to each license sold and retaining the surcharge. If more than one license is listed on a consolidated license form, the license agent shall be compensated as if a single license were sold. It is unlawful for a license agent to add more than the surcharge authorized by this section to the fee for each license sold.

"**§ 113-173. Recreational Commercial Gear License.**

(a) License Required. -- Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational quotas or limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (k) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar ($2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land

or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons."

Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this act and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that are renewed. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has

not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire 1 July 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria for determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal fishing and protection of the environment; and any other factors the Commission determines to be relevant. The Division shall review each application for a SCFL that it receives during the application period to determine whether the applicant is eligible under the eligibility criteria established by the Commission. The Division shall issue SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

Section 5.3. The Marine Fisheries Commission shall adopt rules authorizing the use of a limited amount commercial gear for recreational fishing under a Recreational Commercial Gear License, as required by G.S. 113-173, as enacted by Section 5.1 of this act, on or before 1 July 1999.

Section 5.4. (a) G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article 14A of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act.

(b) G.S. 113-168.9(e), as recodified by subsection (a) of this section, reads as rewritten:

"(e) The owner of a vessel ~~licensed under G.S. 113-152~~ shall be eligible to purchase a vessel crab license for crabs as an alternative to the purchase of individual licenses under this section. A vessel crab license authorizes the owner of the vessel and up to two unlicensed persons serving as crew to fish for crabs from that vessel. It is unlawful for the owner of a vessel to take crabs from the coastal fishing waters of North Carolina for commercial use by any means, when unlicensed persons not authorized by the vessel crab license are on the vessel. The Secretary shall revoke a vessel crab license issued under this subsection ~~shall be revoked when~~ if the owner of the vessel or any other person using the owner's vessel is convicted of a violation

under this ~~section, except for subsection (b).~~ section, other than conviction for a violation under subsection (b) of this section."

(c) All sections of Article 14 of Chapter 113 of the General Statutes other than G.S. 113-153.1 are repealed.

Section 5.5. The Marine Fisheries Commission shall adopt a Fishery Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of this act, no later than 1 January 2000.

Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S. 113-168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take crabs from the coastal fishing waters of the State for commercial use without being licensed under G.S. 113-168.9.

Section 5.7. G.S. 113-168.9, as recodified from G.S. 113-153.1 by Section 5.4 of this act, is repealed.

Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

"(2) When the transplanting is done by a dealer in accordance with the provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules; or".

Section 5.10. G.S. 113-154.1 reads as rewritten:

"**§ 113-154.1. Endorsement to sell fish.**

(a) Requirements. -- Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Marine Fisheries Commission from coastal fishing waters by any means whatever, including aquaculture operations, to sell, offer for sale, barter or exchange for merchandise such fish, without having first procured a current and valid endorsement to sell fish. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid vessel license with an endorsement to sell, or a separate endorsement to sell if no vessel is involved, at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-156.

(b) Fees. -- The annual fee for an endorsement to sell fish on a vessel license for a resident of this State is set forth in G.S. 113-152(h). The annual fee for an endorsement to sell fish when no vessel is involved for a resident of this State is fifteen dollars ($15.00) and for a nonresident of this State is one hundred dollars ($100.00) or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. The license shall be valid for the period July 1 through June 30 of a given year.

(c) Non-Vessel Endorsement Format. -- The format of an endorsement when the applicant is not seeking a vessel license shall include the name of the applicant, date of birth, expiration date of the endorsement, and any other information the Division deems necessary to accomplish the purposes of this Subchapter. The endorsement shall be issued on a card made of hard plastic or metal capable of being used to make

imprints of the sale or transaction. An applicant who is applying for an endorsement on a vessel license shall comply with G.S. 113-152.

(d) Application for Non-Vessel Endorsement. -- An application for issuance or renewal of an endorsement to sell shall be filed with the Morehead City offices of the Division of Marine Fisheries or license agents authorized to sell licenses under this Article. An application shall be accompanied by the fee established in subsection (b) of this section. Applications shall not be accepted from persons ineligible to hold a license issued by the Marine Fisheries Commission, including any applicant whose endorsement is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the endorsement to sell, until the endorsement issued by the Division is received or the Division determines that the applicant is ineligible to hold an endorsement. In addition to the information required in subsection (c) of this section, the applicant shall disclose on the application a valid address, and such other information as the Division may require.

(e) Application for Replacement Non-Vessel Endorsement to Sell. -- A replacement endorsement shall only be obtained from the Morehead City offices of the Division of Marine Fisheries. The Division shall not accept an application for a replacement endorsement unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the endorsement until the replacement license has been received.

(f) Sale of Fish. -- It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of North Carolina or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-156; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-156.

(g) Recordkeeping Requirements. -- The fish dealer shall record each transaction on a form provided by the Department. The transaction form shall include the information on the endorsement to sell of the seller, the quantity of the fish, the identity of the fish dealer, and such other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Department, and to the other party of the transaction. The Department copy of each transaction from the preceding month shall be transmitted to the Department by the fish dealer on or before the tenth day of the following month.

(h) Non-Vessel Endorsement to Sell Nontransferable. -- ~~An~~ A non-vessel endorsement to sell fish issued under this section is nontransferable. It is unlawful to use ~~an~~ a non-vessel endorsement to sell issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a license to sell with the following two exceptions: (i) an individual under the age of 16 may sell fish under the license of a relative or guardian; or (ii) a license may be transferred within a single fishing operation if the person to whom it is transferred is a U.S. citizen. It is

unlawful for a licensee to lend or transfer a license to sell for the purpose of circumventing the requirements of this section.

(h1) Endorsement to Sell Fish on a Vessel License Transferable. -- An endorsement to sell fish on a vessel license may be transferred to the purchaser of the vessel upon application to the Division of Marine Fisheries at the Morehead City office of the Division if the purchaser of the vessel is otherwise qualified to hold an endorsement to sell fish on a vessel license.

(i) **(See note)** Penalties. -- Any person who violates any provision of this section or any rule by the Marine Fisheries Commission to implement this section is guilty of a misdemeanor.

(1) A violation of subsections (a), (f), or (h) or a rule of the Marine Fisheries Commission implementing any of those subsections is punishable as follows:

a. For a first conviction or a subsequent conviction not described in subdivision (1)b. or c., a violation is a Class 3 misdemeanor. A fine shall be imposed of not less than fifty dollars ($50.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed two hundred fifty dollars ($250.00).

b. For a second conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than two hundred fifty dollars ($250.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed five hundred dollars ($500.00).

c. For a third or subsequent conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than five hundred dollars ($500.00) or double the value of the fish which are the subject of the transaction, whichever is greater.

(2) A violation of any other provision of this section other than subsections (a), (f), or (h), or of any rule of the Marine Fisheries Commission other than a rule implementing subsections (a), (f), or (h) of this section, is punishable under G.S. 113-135(a).

(j) Use of Fees. -- Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an endorsement to sell fish shall be applied to the cost of a fisheries data information system that compiles fisheries data obtained from the endorsement program established by G.S. 113-152 and this section or to marine fisheries programs or research projects that enhance knowledge and use of marine and estuarine resources."

Section 5.11. G.S. 113-154 reads as rewritten:

"**§ 113-154. Shellfish license.**

(a) It is unlawful for an individual to take shellfish from the public or private grounds of North Carolina by mechanical means or for commercial use by any means without having first procured an individual shellfish license.

(b) It is unlawful for any individual to take shellfish for commercial use from the public or private grounds of North Carolina without having ready at hand for inspection a current and valid shellfish license issued to him personally and bearing his correct name and address. It is unlawful for any such individual taking or possessing freshly taken shellfish to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(c) Shellfish licenses are issued annually on a fiscal year basis upon payment of a fee of seven dollars and fifty cents ($7.50) upon proof that the license applicant is a resident of North Carolina. ~~Carolina: Provided, that persons under 16 years of age are exempt from the license requirements of this section if they are accompanied by their parent or guardian who is in compliance with the requirements of this section or if they have in their possession their parent's or guardian's shellfish license.~~

(c1) A shellfish leaseholder under G.S. 113-202, or a water column leaseholder under G.S. 113-202.1 or G.S. 113-202.2, or a franchise holder under G.S. 113-206 who purchases an individual shellfish license under this section, may employ persons who do not possess individual shellfish licenses, provided that the employees have written proof of employment on hand, if requested for inspection by a Marine Fisheries officer to verify lawful activities on the lease. The written proof of employment shall include: (i) the name and address of the leaseholder or franchise holder; (ii) the lease or franchise number; (iii) the date of issuance and expiration of the lease or franchise; and (iv) the employee's name and address. The proof of employment shall be signed and dated by the leaseholder or franchise holder.

(d) In the event an individual possessing a shellfish license changes his name or address or receives one erroneous in this respect, he must within 30 days surrender the license for one bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(e) It is unlawful for an individual issued a shellfish license to transfer or offer to transfer his license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Marine Fisheries Commission.

(f) Persons under the age of 18 years of age may take and sell shellfish from the public or private grounds of the State during the period from May 15 through September 1 of each year without holding a shellfish license under this section or an endorsement to sell fish under G.S. 113-154.1."

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 6.1. (a) Subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the

1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session Laws, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July ~~1, 1994,~~ 1994 and ending ~~June 30, 1997,~~ 1 July 1999 under the following statutes:

(1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels, equipment, and operations; fees.

(2) G.S. 113-153.1. Crab ~~license.~~ License.

(3) G.S. 113-154. Shellfish ~~license~~ license.

(4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement to sell fish."

(b) It is the intent of the General Assembly that the moratorium imposed by the amendment made by subsection (a) of this section to subdivision (4) of subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session Laws shall apply to both non-vessel endorsements to sell fish and endorsements to sell fish of vessel licenses.

Section 6.2. Subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this act, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July 1994 and ending 1 July ~~1999~~ 2000 under ~~the following statutes:~~

~~(1) G.S. 113-152. Consolidated license for vessels, equipment, and operations; fees.~~

(2) G.S. ~~113-153.1.~~ 113-168.9, Crab license.

~~(3) G.S. 113-154. Shellfish license.~~

~~(4) G.S. 113-154.1. Endorsement to sell fish.~~"

Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General Statutes is repealed, except that G.S. 143B-289.19 is not repealed but is recodified as G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes and reads as rewritten:

"**§ ~~143B-289.19.~~ 143B-289.40. Office of Marine Affairs -- creation.**

~~There~~ The Office of Marine Affairs is created in the Department of ~~Administration the Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

(b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

(c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this section, reads as rewritten:

"g. Create local advisory committees in accordance with the provisions of G.S. ~~143B-289.22.~~ 143B-289.42."

Section 6.4. The records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting and purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act, are transferred to the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act. All rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws, and all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.2 of this act, that have not been heretofore repealed or rescinded shall continue in effect until repealed or rescinded by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act.

Section 6.5. In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission initially filling positions established by subdivisions (1), (2), and (3) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2001; the terms of members of the Commission initially filling positions established by subdivisions (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2000; the terms of members of the Commission initially filling positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 1999.

Section 6.6. G.S. 113-182(b) reads as rewritten:

"(b) The Marine Fisheries Commission is authorized to authorize, regulate, prohibit, prescribe, or restrict and the Department is authorized to license:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties.

(3) The possession, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all fish taken in the Atlantic Ocean out to a distance of 200 miles from the State's

mean low watermark, consistent with the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., as amended. ~~when the harvest or landing of the fish is controlled by a quota imposed on the State by a federal fisheries management plan.~~"

Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

Section 6.8. All of the Coastal Habitat Protection Plans required by G.S. 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July 2003. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall make the first report on progress in developing and implementing Coastal Habitat Protection Plans, as required by G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1 September 1999. The Secretary of Environment, Health, and Natural Resources shall make the first report on progress in developing and implementing Fishery Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999.

Section 6.9. The Joint Legislative Commission on Seafood and Aquaculture shall study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, to the 1998 Regular Session of the 1997 General Assembly.

Section 6.10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 6.11. The Marine Fisheries Commission may adopt temporary rules to implement or comply with a fisheries management plan adopted by the Atlantic States Marine Fisheries Commission or an interstate fisheries management council.

Section 6.12. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 6.13. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996

Session Laws, Second Extra Session, and Section 12 of Chapter 256 of the 1997 Session Laws, reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire ~~August 1, 1997.~~ 1 July 1998."

Section 6.15. Sections 1.1, 1.3, 1.4, 1.5, 5.8, 5.11, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.15 of this act are effective when this act becomes law. Sections 2.1, 4.4, 5.3, 6.3, 6.4, 6.5, 6.6, and 6.11 of this act become effective 1 September 1997. Sections 4.1 through 4.3 of this act become effective 1 September 1997 and apply to violations and offenses on or after 1 September 1997. Section 1.2 of this act is effective retroactively as of 1 March 1997. Sections 6.1 and 6.10 of this act become effective 31 July 1997. Section 6.14 of this act becomes effective 1 August 1997. Sections 3.1, 3.2, 3.3, 3.4, 3.5, 5.5, and 6.8 of this act become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6, 5.9, and 6.2 of this act become effective 1 July 1999. Section 5.6 of this act expires 1 July 2000. Section 5.7 of this act becomes effective 1 July 2000. Sections 5.1 and 5.2 of this act expire 1 September 2003.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H1097-ARB-7/31

Date _____, 1997

Comm. Sub. [YES]
Amends Title []
H1097-PCS4143

Senator _____

as amended by Amendment Number 1,

moves to amend the bill on page 22, line 35 and 36, by rewriting the lines to read:

"of North Carolina shall be eight hundred dollars ($800.00) or the amount charged to a North Carolina resident in the nonresident's state, ~~which is lesser;~~ however, in no event may the fee be less than two hundred dollars ($200.00).".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

whichever is less;

North Carolina General Assembly
Legislative Services Office

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July 29, 1997

MEMORANDUM

To: Senate Finance Committee

From: Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant

Re: **House Bill 1097, 6th edition - Fisheries Reform Act-2**

WHEREAS CLAUSES

The General Assembly recognizes

- The State of North Carolina has one of the most diverse fisheries in the United States;
- That commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood;
- The economic contribution and important heritage of commercial fishing;
- That for many citizens, fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction;
- The importance of plentiful fisheries resources to maintain and enhance tourism in the State; and
- The need to protect our coastal fisheries resources and to balance commercial and recreational interests.

PART I. SHORT TITLE; PERFORMANCE AUDIT

Section 1.1 entitles this act the Fisheries Reform Act of 1997.

Section 1.2 directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries (Division) and to assess the capacity of the Division of Marine Fisheries to effectively implement the licensing provisions (Part V) of this act. This section directs that the State Auditor report to the Joint Legislative Commission on Seafood and Aquaculture (Seafood and Aquaculture) by February 1, 1998, and directs Seafood and Aquaculture to review the performance audit and make a specific recommendation to the 1998 General Assembly as to whether or not the licensing provisions of this act should be implemented.

Effective Date: Audit is effective retroactively to March 1, 1997

PART II. MARINE FISHERIES COMMISSION

(Note: Current Marine Fisheries Commission (MFC) is repealed in Section 6.3(a) of this act.)

Section 2.1 amends Article 7 of Chapter 143B by adding a new Part entitled "Part 5B. Marine Fisheries Commission. This section:

- Reduces Marine Fisheries Commission (MFC) from 17 to 9 members comprised of:
  - two persons actively engaged in, or recently retired from, commercial fishing;
  - one person actively connected with, and experienced as, a licensed fish dealer or seafood processor;
  - two persons actively engaged in recreational sports fishing;
  - one person actively engaged in the sports fishing industry;
  - two persons having general knowledge of and experience related to subjects and persons regulated by the MFC; and,
  - one person who is a fisheries scientist.
- Provides that appointments are to be made by the Governor;
- Provides that at least 5 members must be residents of a coastal region of the State;
- Strengthens ethical standards;
- Establishes 4 standing advisory committees (Finfish Committee; Crustacean Committee; Shellfish Committee; Habitat & Water Quality Committee) comprised of commercial and recreational fishermen, scientists, and other experts. This section also establishes 4 regional advisory committees representing the different regions of the State; and
- Authorizes the MFC to act as an appellate body for civil penalty assessments and clarifies that unless otherwise provided, the MFC has the final decision making authority for contested cases within its jurisdiction.

Effective Date: Sept. 1, 1997

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Coastal Habitat Protection Plans (CHPPs)

Section 3.1 amends Chapter 143B by adding a new section, G.S. 143B-279.8 that directs DEHNR to coordinate the preparation of draft Coastal Habitat Protection Plans (CHPPs) for critical fisheries habitats. A CHPP shall: (i) describe and classify biological systems in habitats; (ii) evaluate the function, value to coastal fisheries, status, and trends of habitats; (iii) identify existing and potential threats to habitats and impacts on coastal fishing; and (iv) make recommendations to protect and restore critical fisheries habitats. Once a draft CHPP has been prepared, the MFC, Environmental Management Commission (EMC), and Coastal Resources Commission (CRC) must appoint a six-member review committee to review and revise the draft CHPP. The CHPP will then be submitted to each commission to consider for adoption. The commissions may appoint a six-member conference committee to facilitate the resolution of any aspect of a CHPP on which they cannot agree. The final CHPP will consist of the provisions concurrently agreed upon by all three commissions. Each CHPP must be reviewed and revised at least once every five years. Each commission must, to the maximum extent practicable, ensure that its actions are consistent with the CHPPs and must provide a written explanation of any action it takes that is inconsistent with a CHPP. Any rules adopted to implement the CHPPs must be done in accordance with the APA. The three commissions must report annually to the ERC and Seafood and Aquaculture on progress and implementation of CHPPs. The SEHNR must report to the ERC within 30 days of the completion, or substantial revision of the CHPPs, and the ERC has 30 days to review and comment.

Sections 2.1, 3.2, and 3.3 direct the MFC, EMC, and the CRC to adopt CHPPs.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Effective Date: July 1, 1998.

Fishery Management Plans

Section 3.4 amends Chapter 113 by adding a new section, G.S. 113-182.1 that directs DEHNR to prepare proposed Fishery Management Plans (FMPs) for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. The FMPs are to be developed in accordance with a Priority List, Schedule, and guidance criteria established by MFC. The FMPs must incorporate fishery habitat and water quality considerations consistent with CHPPs, recommend management actions, and conservation and management measures. Any rules adopted to implement a FMP must be done in accordance with the APA. This section provides that Advisory Councils composed of experts on each particular fishery will assist in the development of the FMPs, and that the Secretary of Environment, Health and Natural Resources (SEHNR) will monitor progress of development and adoption of FMPs and will report annually to the ERC and Seafood and Aquaculture on this progress. This section also requires that the SEHNR report to Seafood and Aquaculture and the ERC within 30 days of the completion or substantial revision of the FMPs and gives Seafood and Aquaculture and the ERC 30 days to review and comment. Finally, this section authorizes the SEHNR to issue a proclamation prohibiting the taking of certain fisheries resources if there is a failure to complete the FMP according to the Schedule.

Section 3.5 amends G.S. 113-129, Definitions relating to resources, to add definitions for "optimal yield" and "overfishing or overfished".

Section 2.1 directs the MFC to establish a Priority List, schedule, and guidance criteria for FMPs.

Effective Date: July. 1, 1998.

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1 amends G.S. 113-187 to increase the penalties for violation of general fisheries laws.

Section 4.2 adds G.S. 113-190 to increase the penalties for the unlawful sale or purchase of fish. This section also authorizes the SEHNR to assess a civil penalty up to $10,000 for illegal sale or purchase of fish.

Section 4.3 amends G.S. 113-221(e) to authorize the Fisheries Director to determine, on a case-by-case basis and in the Director's sole discretion, that a proclamation did not apply to a licensee who was without notice due to an act of God or unforeseeable circumstance.

Section 4.4 directs the MFC to develop a Violations Points System and implementation schedule and report to Seafood and Aquaculture by July 1, 1999 on the development of the Violation Points System and the implementation schedule.

Effective Date: Sept. 1, 1997; provisions apply to violations and offenses on or after September 1, 1997.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Standard Commercial Fishing License (SCFL)

Section 5.1 establishes Article 14A of G.S. 113 to be entitled the Coastal and Estuarine Commercial Fishing Licenses which establishes SCFLs as follows:

- Entitles holder to sell fish;
- Fees: $200 for residents; $2,000 for nonresidents or the amount charged to a NC resident in the nonresident's state, whichever is less;
- Assignability - SCFL is assignable. Vessel endorsements may be assigned independently of SCFL to another SCFL holder;
- Transferability - SCFLs may be transferred under certain circumstances to a member of the SCFL holder's estate; a third-party purchaser of the SCFL holder's fishing vessel; or as authorized by MFC; and
- Vessel endorsement required for an additional fee based on length of vessel.

Other commercial fishing licenses

Section 5.1 also provides for the following:

- Retired SCFL available to persons 65 and older for an annual fee of $100;
- Shellfish license for NC residents not holding a SCFL available for $25; and
- Fish dealer license available for various fees.

Section 5.2 establishes provisions to implement Section 5.1. These transitional provisions apply to the issuance of fishing licenses until all FMPs have been adopted. These provisions provide for the following:

- Eligibility - SCFLs are available to any person who holds an endorsement to sell on July 1, 1999;
- Flexibility for new entrants - 500 SCFLs will be available for distribution by lot for persons not otherwise eligible for a SCFL;
- Establishment of a temporary cap on the total number of SCFLs the MFC may issue. The temporary cap is equal to the total number of endorsements to sell that establish eligibility for a SCFL plus an additional 500 SCFLs for new entrants;
- For the 1999-2000 license year, the MFC is authorized to:
    - issue an SCFL to any person who held a valid endorsement to sell fish prior to July 1, 1999;
    - issue an SCFL to any person who filed a petition with the Appeals Panel which was denied; and,
    - distribute an additional 500 SCFLs by lot.

  For subsequent license years, the MFC is authorized to issue licenses from the pool of available SCFLs. (The pool of available SCFLs is the temporary cap less the number of SCFLs renewed from the previous license year.)

Effective Date: July 1, 1999.

Recreational Commercial Gear License (RCGL)

Section 5.1 also establishes a Recreational Commercial Gear License (RCGL) as follows:

- RCGL holder may use limited amounts of commercial gear;
- License holder is not entitled to sell fish; and
- Fees: $35 for residents; $250 for nonresidents.

Section 5.3 directs the MFC to adopt rules authorizing the use of a limited amount of commercial gear for recreational fishing by July 1, 1999.

Effective Date: July 1, 1999

Sections 5.4, 5.5, 5.6, 5.7 and 6.2 govern the taking of crabs by:

- Retaining the current crab license;
- Extending the moratorium on the issuance of crab licenses until July 1, 2000;
- Directing the MFC to adopt a blue crab FMP by January 1, 2000; and
- Providing that only those persons currently holding crab licenses may take crabs.

Section 5.10 makes the Endorsement to Sell transferable to the purchaser of a vessel.

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATE.

Section 6.1 extends moratorium on issuance of licenses from July 31, 1997, to July 1, 1999 and alters the moratorium on licenses to include all Endorsements to Sell (vessel and non-vessel); effective July 31, 1997.

Section 6.3 recodifies G.S. 143B-289.19 to G.S. 143B-289.40 and makes technical and clarifying changes.

Section 6.4 transfers all records personnel, property, unexpended funds and functions from the current Marine Fisheries Commission to the Marine Fisheries Commission established by this act.

Section 6.5 establishes staggered terms for members of the MFC.

Section 6.6 authorizes the MFC to regulate NC fisheries consistent with federal law.

Section 6.7 recodifies G.S. 113-190 to G.S. 113-200.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Section 6.9 directs Seafood and Aquaculture to study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. Seafood and Aquaculture will report its findings and recommendations, if any, to the 1998 Regular Session of the General Assembly.

Section 6.10 clarifies that this act constitutes a recent act of the General Assembly pursuant the G.S. 150B (APA), and therefore, agencies are authorized to adopt temporary rules to implement the provisions of this act. This section will continue to be in effect until all rules necessary to implement this act have been adopted as temporary or permanent rules.

Section 6.11 authorizes the MFC to adopt temporary rules to comply with fisheries management plans adopted by an interstate fisheries management council.

Section 6.12 Part Headings as convenience for reader only.

Section 6.13 Severability Clause.

Section 6.14 extends the moratorium on new shellfish cultivation leases in a portion of Core Sound from August 1, 1997 to July 1, 1998; effective August 1, 1997.

Section 6.15 Effective Dates.

H1097-SMSB-003

PROPOSED SENATE FINANCE COMMITTEE CHANGES TO HB 1097, 6th EDITION - FISHERIES REFORM ACT - 2

July 29, 1997

The proposed Senate committee substitute:

- Requires the Joint Legislative Commission on Seafood and Aquaculture to determine if and how a recreational saltwater fishing license should be implemented and report to the 1998 Regular Session of the General Assembly.

- Crew Licenses
  - Removes the authority of the Marine Fisheries Commission to establish a crew license; and,
  - Requires the Joint Legislative Commission on Seafood and Aquaculture to study whether a crew license should be established and report to the 1998 Regular Session of the General Assembly.

- Requires the Joint Legislative Commission on Seafood and Aquaculture to develop a comprehensive approach for the enhancement and management of shellfish resources and report to the 1998 Regular Session of the General Assembly.

- Exempts persons under 18 years of age from shellfish license and endorsement to sell requirements during the period from May 15 to September 1 of each year and makes correcting changes for persons taking shellfish for personal use.

Mary Beach Shuping
Research Division
07/28/97/9:23 PM

Attachment # 2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 29, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JERRY SCHILL	NC Fisheries Assoc.
Paul Smith	Carteret Cty.
Janice M. Smith	Luther L. Smith & Seafood
Sandra Gaskill	Carteret County / NC FA Commercial Fishermen
Barbara Jackson	Holt & York, LLP Raleigh, NC
Jack Hawke	NCLOA
Gary Rafford	NCLOLA
R. Paul Wilson	NCMBA
JACK McCAT	NORTH CAROLINA DIVISION
Guy Radford	NC DOR
Paul Zigas	OSBM

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 29, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Gillespie	N.C. Attorney General's Office
Allen Jernigan	"
Dan McLawhorn	"
Jess A. Hawkins III	N.C. Marine Fisheries
Lin Creed	NCDMV Veh Reg.
TANJA VUJIĆ	NC EDF
DOUGLAS N. RADER	NCEDF
Ken Rudacille	WCSR/CCA
LEIGHTON ROPER	ZDA, PA
Alan Miles	Bailey & Dixon LLP
John McMillan	Manning Fulton & Skinner P.A.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 29, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christy Barbee	CAPA
Dan White	EHNR
John Power	EHNR - Marine Fisheries
Janice Druchon	EHNR - Marine Fisheries
Twila Nelson	MFC
Molly Diggins	NC Sierra Club
Mike Street	NC Div Mar Fisheries
Jon Hall	MFC
Joe Olinger	Sierra Club / CCNC
Cam Cover	BPMHL
John Rustin	NCFPC

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, July 29, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS)**611** Increase Comp. for Err. Conviction.
Sequential Referral: None
Recommended Referral: None

H.B.(CS)**844** Reidsville Annexation Restricted.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: H 844 and H 611

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 30, 1997

12:00 NOON - ROOM 544 LOB

The Senate Committee met. There were 26 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order and introduced the Pages, they are Cristan Evans from Greenville, N. C., sponsored by Senator Warren, Nadia Stone from Clayton, N. C., sponsored by Senator Ballance and Matt Nanney from Raleigh, N. C., sponsored by Senator Reeves.

H. B. 418 - Mt. Airy/Avery Occup. Tax Alleghany/Norwood

Representative Thompson came to explain the bill. Senator Winner made a motion for adoption of a committee substitute, motion passed. Senator Kerr moved for a "favorable" report, motion passed.

H. B. 1110 - Landscape Architects

Representative McMahan came to explain the bill. Senator Larry Shaw made a motion for a "favorable" report, motion passed.

H. B. 1156 - March of Dimes License Plates

Representative Morris came to explain the bill. Senator Lee made a motion for adoption of a committee substitute to the bill which would add the School of Technology Plate, motion passed. Mr. Kirk Williams from the Governor's Office spoke on the bill. Ms. Ruth Sappie from Department of Transportation explained to the Committee how the design is done on these special plates. Senator Larry Shaw asked that Bill be withdrawn from the Agenda so that the members of the Committee could take a closer look at this bill. Senator Allran asked that an amendment be drawn to include in this bill a section for Veterans to receive a special plate. After much discussion and questions on this Bill, Senator Hoyle stated that he was displacing this Bill and that it would be brought back to Committee at a later meeting.

H. B. 866 - Carteret/Moore School Bd. Elections

Representative Preston came to explain the bill. Senator Purcell made a motion for adoption of a committee substitute, motion passed. Senator Ballantine made a motion to give the committee substitute bill a "favorable" report, motion passed.

Senator Kerr, Co-Chairman, came to preside so that Senator Hoyle could explain a bill.

S. B. 841 - Modify Corporate Dividend Taxation

Senator Hoyle came to explain the bill. After some questions on the bill, Senator Kerr stated that this bill would be pulled and placed on the Agenda for Thursday due to the time had expired for this meeting.

NOTE: S. B. 36, S. B. 39 that were on the Agenda were not discussed because of a lack of time.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report dated July 31, 1997 is Attachment # 3

Attachment #1

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JULY 30, 1997

12:00 NOON, ROOM 544

HB 418 - Mt. Airy/Avery Occup. Tax Alleghany/Norwood - Rep.Thompson

HB 1110 - Landscape Architects - Rep. McMahan

HB 1156 - March of Dimes License Plates - Rep. Morris

SB 36 - Uniform Tax on Piped Natural Gas - Sen. Kerr

SB 39 - Modify Setoff Debt Collection - Sen. Larry Shaw

SB 841 - Modify Corporate Dividend Taxation - Sen. Hoyle

HB 866 - Carteret/Moore School Bd Elections - Rep. Preston

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 418
Committee Substitute Favorable 7/17/97

Short Title: Mt. Airy/Avery Occup. Tax Alleghany/Norwood. (Local)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF MOUNT AIRY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO MODIFY THE DISTRIBUTION OF THE AVERY COUNTY OCCUPANCY TAX, AND TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF NEWLAND AND SPRUCE PINE AND FOR THE COUNTY OF ALLEGHANY BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES, AND TO VALIDATE BUDGET PROCEDURES OF THE TOWN OF NORWOOD IN STANLY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Mount Airy Occupancy Tax. (a) Authorization and scope. The Mount Airy Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations or by nonprofit summer camps when the accommodations are furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The City of Mount Airy shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Mount Airy Tourism Development Authority. The Authority shall use the funds remitted to it under this subsection only to promote travel and tourism in the Mount Airy area. The following definitions apply in this section:

(1) Net proceeds. -- Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the gross proceeds.

(2) Promote travel and tourism. -- Advertise and market activities, develop and distribute promotional materials, conduct market research, and engage in other similar promotional activities that attract tourists or business travelers to the area. The term also includes administration of the Mount Airy Tourism Development Authority.

Section 2. Mount Airy Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a Mount Airy Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The board of commissioners shall appoint the following eight members to the Authority:

(1) Two individuals who are owners or operators of taxable tourist accommodations in the city.

(2) Two residents of the city who have experience in the promotion of travel and tourism.

(3) Two residents of the city who are members of the Mount Airy Chamber of Commerce, selected by the Mount Airy Chamber of Commerce.

(4) One member of the board of commissioners.

(5) The city finance officer, who shall serve as an ex officio, nonvoting member.

Members of the Authority shall serve without compensation and shall serve for a term of three years. Vacancies shall be filled in the same manner as the original appointment. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. An individual may serve as a member for no more than two consecutive terms. The members shall elect a chair from among the membership, who shall serve for three years. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel and tourism in the Mount Airy area. In performing its duties, the Authority may contract with any person, firm, or agency to advise and assist it and may recommend to the board of commissioners that city staff be employed for this advice and assistance. Any city staff employed upon a

recommendation of the Authority shall be hired and supervised by the Authority, which shall pay the salaries and expenses of this staff.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 3. Municipal Administrative Provisions. (a) Article 9 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. -- This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term 'city' means a municipality.

(b) Levy. -- A room occupancy tax may be levied only by resolution after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. -- A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted.. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

(b) This section applies only to the City of Mount Airy.

Section 4. Avery County Occupancy Tax. Section 1 of Chapter 472 of the 1993 Session Laws reads as rewritten:

"Section 1. Avery County Occupancy tax.

(a) **Authorization and Scope.**

The Avery County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and is not subject to a room occupancy tax levied by a municipality. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations. The occupancy tax rate payable on accommodations furnished within Avery County may not exceed six percent (6%).

(b) ~~Collection.~~ Administration.

A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

~~(c) Administration.~~

~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before~~

~~the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) **Penalties.**~~

~~A person, firm, corporation, or association who fails or refuses to file the return required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The board of commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) **Distribution and Use of Tax Revenue.**

Avery County ~~shall use at least~~ shall, on a quarterly basis, distribute two-thirds of the net proceeds of the occupancy tax revenue to the Avery Tourism Development Authority created pursuant to Section 1.1 of this act to be used only to promote travel and tourism in Avery County and ~~shall spend~~ distribute the remainder ~~on~~ to the Avery County Chamber of Commerce to be used only for tourism-related expenditures. The chamber of commerce shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- ~~Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the county and expenditures incurred by the county in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the board of commissioners, will facilitate and support tourism.~~ Expenditures that, in the judgment of the entity making the expenditures, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) **Effective Date of Levy.**~~

~~A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal.~~

~~A tax levied under this section may be repealed by a resolution adopted by the Avery County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 5. Avery Tourism Development Authority. Chapter 472 of the 1993 Session Laws is amended by adding a new section to read:

"Sec. 1.1. Avery Tourism Development Authority. (a) Appointment and membership. The board of commissioners of Avery County shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have nine voting members appointed by the board of commissioners as follows:

(1) Four individuals selected by the Avery County Lodging Association.

(2) Two individuals selected by the Avery County Chamber of Commerce.

(3) One member of the Avery County Board of Commissioners, to serve ex officio.

(4) Two members of the public.

The resolution shall provide for four-year terms of office for the members other than the county commissioner, except that the initial terms of four members shall be set at three years to provide for staggered terms. The resolution shall also provide for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Avery County shall be the ex officio finance officer of the Authority and shall serve as an ex officio, nonvoting member of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel and tourism in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

Section 6. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, reads as rewritten:

"(b) This section applies only to ~~Madison~~ Avery, Madison, and Nash Counties."

Section 7. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 8. Section 1 of Chapter 537 of the 1987 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Mitchell County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Mitchell County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Spruce Pine, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 9. Section 1 of Chapter 657 of the 1993 Session Laws reads as rewritten:

"Section 1. The ~~Register~~ Registers of Deeds of ~~Ashe County~~ Alleghany and Ashe Counties shall not receive for recordation any deed unless the deed is accompanied by a certificate from the ~~Ashe~~ County Tax Collector to the effect that all delinquent taxes upon the property described in the deed offered for recordation have been paid."

Section 10. For the 1986-87 through 1996-97 fiscal years, the Town of Norwood, through the budgetary procedures it adopted and followed, is deemed to have adopted a budget ordinance and to have complied with all the requirements of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes. Taxes levied and collected by the Town of Norwood for those fiscal years are in all respects validated and confirmed. Appropriations and expenditures by the Town of Norwood for those fiscal years are in all respects validated and confirmed.

Section 11. Sections 4, 5, and 6 of this act become effective August 1, 1997, and apply to taxes paid on or after that date. Sections 7, 8, and 9 of this act become effective October 1, 1997, and apply to deeds recorded on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 418
Committee Substitute Favorable 7/17/97
Proposed Senate Committee Substitute H418-PCS6310

Short Title: Various Local Tax Changes. (Local)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF MOUNT AIRY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, TO MODIFY THE DISTRIBUTION OF THE AVERY COUNTY OCCUPANCY TAX, TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWNS OF NEWLAND AND SPRUCE PINE AND FOR THE COUNTY OF ALLEGHANY BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES, AND TO VALIDATE BUDGET PROCEDURES OF THE TOWN OF NORWOOD IN STANLY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Mount Airy Occupancy Tax. (a) Authorization and scope. The Mount Airy Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations or by nonprofit summer camps when the accommodations are furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The City of Mount Airy shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Mount Airy Tourism Development Authority. The Authority shall use the funds remitted to it under this subsection only to promote travel and tourism in the Mount Airy area. The following definitions apply in this section:

(1) Net proceeds. -- Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the gross proceeds.

(2) Promote travel and tourism. -- Advertise and market activities, develop and distribute promotional materials, conduct market research, and engage in other similar promotional activities that attract tourists or business travelers to the area. The term also includes administration of the Mount Airy Tourism Development Authority.

Section 2. Mount Airy Tourism Development Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a Mount Airy Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The board of commissioners shall appoint the following eight members to the Authority:

(1) Two individuals who are owners or operators of taxable tourist accommodations in the city.

(2) Two residents of the city who have experience in the promotion of travel and tourism.

(3) Two residents of the city who are members of the Mount Airy Chamber of Commerce, selected by the Mount Airy Chamber of Commerce.

(4) One member of the board of commissioners.

(5) The city finance officer, who shall serve as an ex officio, nonvoting member.

Members of the Authority shall serve without compensation and shall serve for a term of three years. Vacancies shall be filled in the same manner as the original appointment. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. An individual may serve as a member for no more than two consecutive terms. The members shall elect a chair from among the membership, who shall serve for three years. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel and tourism in the Mount Airy area. In performing its duties, the Authority may contract with any person, firm, or agency to advise and

assist it and may recommend to the board of commissioners that city staff be employed for this advice and assistance. Any city staff employed upon a recommendation of the Authority shall be hired and supervised by the Authority, which shall pay the salaries and expenses of this staff.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by ratified House Bill 859 and ratified Senate Bill 585, 1997 General Assembly, applies to the City of Mount Airy.

Section 4. Avery County Occupancy Tax. Section 1 of Chapter 472 of the 1993 Session Laws reads as rewritten:

"Section 1. Avery County Occupancy tax.

(a) **Authorization and Scope.**

The Avery County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3) and is not subject to a room occupancy tax levied by a municipality. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations. The occupancy tax rate payable on accommodations furnished within Avery County may not exceed six percent (6%).

(b) ~~**Collection.**~~ **Administration.**

A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for collecting State sales and use taxes.~~

~~(c) **Administration.**~~

~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues.~~

~~Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) **Penalties.**~~

~~A person, firm, corporation, or association who fails or refuses to file the return required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The board of commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) **Distribution and Use of Tax Revenue.**

Avery County ~~shall use at least~~ shall, on a quarterly basis, distribute the net proceeds of the occupancy tax as follows: two-thirds to the Avery Tourism Development Authority created pursuant to Section 1.1 of this act and one-third to the Avery County Chamber of Commerce. The Tourism Development Authority shall use at least one-half of the proceeds distributed to it to promote travel and tourism and shall use the remainder for tourism-related expenditures. The chamber of commerce shall use the proceeds distributed to it only to promote travel and tourism. ~~two-thirds of the net proceeds of the occupancy tax revenue to promote travel and tourism in Avery County and shall spend the remainder on tourism-related expenditures.~~ The chamber of commerce shall comply with the same requirements for reporting and for submitting an annual budget for approval by the county commissioners as are established for the Avery Tourism Development Authority in Section 1.1 of this act. The Tourism Development Authority and the chamber of commerce may not spend any of the proceeds distributed to them under this section except in accordance with a proposed budget and work plan approved by the board of county commissioners as provided in Section 1.1 of this act.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that are designed to increase the use of lodging facilities in a county or to attract tourists or business travelers to the ~~county and expenditures incurred by the county in collecting the tax.~~ county. The term

includes expenditures to construct, maintain, operate, or market a convention center and other expenditures that, in the judgment of the ~~board of commissioners,~~ entity making the expenditure, will facilitate and support tourism.

~~(f) Effective Date of Levy.~~

~~A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal.~~

~~A tax levied under this section may be repealed by a resolution adopted by the Avery County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 5. Avery Tourism Development Authority. Chapter 472 of the 1993 Session Laws is amended by adding a new section to read:

"Sec. 1.1. Avery Tourism Development Authority. (a) Appointment and membership. The board of commissioners of Avery County shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall have nine voting members appointed by the board of commissioners as follows:

(1) Four individuals selected by the Avery County Lodging Association.

(2) Two individuals selected by the Avery County Chamber of Commerce.

(3) One member of the Avery County Board of Commissioners, to serve ex officio.

(4) Two members of the public.

The resolution shall provide for four-year terms of office for the members other than the county commissioner, except that the initial terms of four members shall be set at three years to provide for staggered terms. The resolution shall also provide for the filling of vacancies on the Authority. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Avery County shall be the ex officio finance officer of the Authority and shall serve as an ex officio, nonvoting member of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall

promote travel and tourism in the county and make tourism-related expenditures, as defined in Section 1 of this act.

(c) Annual Budget. On or before October 1, 1997, and by May 1 of each year thereafter, the Authority shall submit for approval by the board of commissioners a proposed budget and work plan for expenditure of the estimated tax revenues for the ensuing fiscal period. If the proposed budget is not approved, the Authority shall submit a revised proposed budget for approval. The Authority may not spend any of the proceeds distributed to it under Section 1 of this act except in accordance with a proposed budget and work plan approved by the board of county commissioners.

(d) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

Section 6. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, Section 2 of S.L. 1997-442, and Section 3 of ratified House Bill 859, 1997 General Assembly, is further amended by adding the phrase "Avery," in its proper alphabetical order.

Section 7. Section 1 of Chapter 305 of the 1963 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 8. Section 1 of Chapter 537 of the 1987 Session Laws is rewritten to read:

"Section 1. The Register of Deeds of Mitchell County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Mitchell County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Spruce Pine, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 9. Section 1 of Chapter 657 of the 1993 Session Laws reads as rewritten:

"Section 1. The ~~Register~~ Registers of Deeds of ~~Ashe County~~ Alleghany and Ashe Counties shall not receive for recordation any deed unless the deed is accompanied by a certificate from the ~~Ashe~~ County Tax Collector to the effect that all delinquent taxes upon the property described in the deed offered for recordation have been paid."

Section 10. For the 1986-87 through 1996-97 fiscal years, the Town of Norwood, through the budgetary procedures it adopted and followed, is deemed to have adopted a budget ordinance and to have complied with all the requirements of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes. Taxes levied and collected by the Town of Norwood for those fiscal years are in all respects validated and confirmed. Appropriations and expenditures by the Town of Norwood for those fiscal years are in all respects validated and confirmed.

Section 11. Sections 4, 5, and 6 of this act become effective September 1, 1997, and apply to taxes paid on or after that date. Sections 7, 8, and 9 of this act become effective October 1, 1997, and apply to deeds recorded on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 1110
Committee Substitute Favorable 5/28/97
Committee Substitute #2 Favorable 7/10/97
Fourth Edition Engrossed 7/15/97

Short Title: Landscape Architects. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATUTES RELATED TO LANDSCAPE ARCHITECTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89A-1 reads as rewritten:

"**§ 89A-1. Definitions.**

The following definitions apply in this Chapter:

~~(a)~~ (1) ~~'Board' shall mean the~~ Board. -- The North Carolina Board of Landscape ~~Architects, established by G.S. 89A-3.~~ Architects.

~~(b)~~ (2) ~~'Landscape architect' shall mean a~~ Landscape architect. -- A person who, on the basis of demonstrated knowledge acquired by professional education or practical experience, or both, has been granted, and holds a current certificate entitling him or her to practice 'landscape architecture' and to use the title 'landscape architect' in North Carolina under the authority of this Chapter.

~~(c)~~ (3) ~~'Landscape architecture,' or the 'practice of landscape architecture' shall mean the~~ Landscape architecture or the practice of landscape architecture. -- The preparation of plans and specifications and supervising the execution of projects involving the arranging of land and the elements used thereon for public and private use and enjoyment, embracing drainage, soil conservation,

grading and planting plans and erosion control, in accordance with the accepted professional standards of public health, safety and welfare."

Section 2. G.S. 89A-2 reads as rewritten:

"**§ 89A-2. ~~Use~~ Practice of landscape architecture or use of title 'landscape architect' without registration prohibited; use of seal.**

(a) ~~On and after January 1, 1970, no~~ No person shall use the designation 'landscape architect,' 'landscape architecture,' or 'landscape architectural,' or advertise any title or description tending to convey the impression that he or she is a landscape architect or shall engage in the practice of landscape architecture unless ~~such~~ the person is registered ~~or has obtained a temporary permit~~ as a landscape architect in the manner hereinafter provided and ~~shall thereafter comply~~ thereafter complies with the provisions of this Chapter. Every holder of a certificate shall display it in a conspicuous place in his or her principal office, place of business or employment.

(a1) No firm, partnership, or corporation shall engage in the practice of landscape architecture unless the firm, partnership, or corporation registered with the Board and has paid the fee required by G.S. 89A-6. All landscape architecture performed by a firm, partnership, or corporation shall be under the direct supervision of an individual who is registered under this Chapter.

(b) Nothing in this Chapter shall be construed ~~as authorizing~~ (i) to authorize a landscape architect to engage in the practice of architecture, ~~engineering~~ engineering, or land surveying, ~~nor~~ (ii) to restrict from the practice of landscape architecture or otherwise affect the rights of any person licensed to practice architecture under Chapter 83A, or engineering or land surveying under Chapter 89C of the General ~~Statutes;~~ Statutes if the person does not use the title landscape architect, landscape architecture, or landscape architectural, ~~or~~ (iii) to restrict any person from engaging in the occupation of grading lands whether by hand tools or machinery, ~~or~~ (iv) to restrict the planting, ~~maintaining~~ maintaining, or marketing of plants or plant ~~materials: Provided, however, that no individual shall use the title 'landscape architect' unless he has complied with the provisions of this Chapter.~~ materials or the drafting of plans or specifications related to the location of plants on a site, (v) to require a certificate for the preparation, sale, or furnishing of plans, specifications and related data, or for the supervision of construction pursuant thereto, where the project involved is a single family residential site, or a residential, institutional, or commercial site of one acre or less, or the project involved is a site of more than one acre where only planting and mulching is required, or (vi) to prevent any individual from making plans or data for their own building site or for the supervision of construction pursuant thereto.

(c) Each landscape architect shall, upon registration, obtain a seal of the design authorized by the Board, bearing the name of the registrant, number of certificate and the legend 'N.C. Registered Landscape Architect'. Such seal may be used only while the registrant's certificate is in full force and effect.

Nothing in this Chapter shall be construed as authorizing the use or acceptance of the seal of a landscape architect ~~in lieu~~ instead of or as a substitute for the seal of an architect, ~~engineer~~ engineer, or land surveyor."

Section 3. G.S. 89A-3 reads as rewritten:

"**§ 89A-3. North Carolina Board of Landscape Architects; ~~appointments; powers.~~ appointments.**

(a) There is created the North Carolina Board of Landscape Architects, consisting of seven members appointed by the Governor for four-year staggered terms. Five members of the Board shall have been engaged in the practice of landscape architecture in North Carolina at least five years at the time of their respective appointments. Two members of the Board shall not be landscape architects and shall represent the interest of the public at large. Each member shall hold office until the appointment and qualification of his or her successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term. No member shall serve more than two complete consecutive terms.

~~The Governor shall appoint the two public members not later than July 1, 1979, to serve four-year terms.~~

The Board shall be subject to the provisions of Chapter 93B of the General Statutes.

(b) The Board shall elect annually from its members a ~~chairman~~ chair and a ~~vice-chairman~~ vice-chair and shall hold such meetings during the year as it may determine to be necessary, one of which shall consist of the annual meeting. A quorum of the Board shall consist of not less than three members.

(b1) The members of the Board shall not be compensated. However, members shall be entitled to be reimbursed from Board funds for all proper traveling and incidental expenses incurred in carrying out the provisions of this Chapter.

~~(c) The Board shall have power to compel the attendance of witnesses, to administer oaths, and to take testimony and proofs of all matters within its jurisdiction. The Board shall have the power to make such rules not inconsistent with law as may be necessary in the performance of its duties.~~

~~(d) The Board shall elect a secretary, who may or may not be a member of the Board, and who shall hold office at the pleasure of the Board. The members of the Board shall not be compensated except that the secretary shall receive such salary as is fixed by the Board. The members of the Board shall, however, be entitled to be reimbursed from Board funds for all proper traveling and incidental expenses incurred in carrying out the provisions of this Chapter.~~"

Section 4. Chapter 89A of the General Statutes is amended by adding a new section to read:

"**§ 89A-3A. Board's powers and duties.**

The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this Chapter.

(2) Adopt rules to administer and enforce the provisions of this Chapter.

(3) Examine and determine the qualifications and fitness of applicants for registration and renewal of registration.
(4) Determine the qualifications of firms, partnerships, or corporations applying for a certificate of registration.
(5) Issue, renew, deny, suspend, or revoke certificates of registration and conduct any disciplinary actions authorized by this Chapter.
(6) Establish and approve continuing education requirements for persons registered under this Chapter.
(7) Receive and investigate complaints from members of the public.
(8) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining registrants exist.
(9) Conduct administrative hearings in accordance with Article 3 of Chapter 150B of the General Statutes.
(10) Maintain a record of all proceedings conducted by the Board and make available to registrants and other concerned parties an annual report of all Board action.
(11) Employ and fix the compensation of personnel that the Board determines is necessary to carry out the provisions of this Chapter and incur other expenses necessary to perform the duties of the Board.
(12) Adopt and publish a code of professional conduct for all registrants.
(13) Adopt a seal containing the name of the Board for use on all certificates of registration and official reports issued by the Board."

Section 5. G.S. 89A-4 reads as rewritten:

"**§ 89A-4. Application, examination, certificate.**

(a) Any person hereafter desiring to be registered and licensed to use the title 'landscape architect' and to practice landscape architecture in the State, shall make a written application for examination to the Board, on a form prescribed by the Board, together with such evidence of his or her qualifications as may be prescribed by rules ~~and regulations~~ of the Board. Minimum qualifications under such rules shall require that the ~~applicant~~ applicant:

(1) Shall be at least 18 years of ~~age and~~ age.
(2) Shall be of good moral ~~character; and that the applicant shall~~ character.
(3) Shall be a graduate of ~~an~~ a Landscape Architect's Accreditation Board (LAAB) accredited collegiate curriculum in landscape architecture as approved by the ~~Board and~~ Board.
(4) Shall have at least ~~one year's experience;~~ four years' experience in landscape architecture.

(a1) ~~in lieu of such graduation and experience~~ Notwithstanding the requirements of subdivisions (a)(3) and (4) of this section, any person who has had a minimum of ~~seven~~ 10 years of education and experience in landscape architecture, in any

combination deemed suitable by the Board, may make application to the Board for examination.

(b) If ~~said~~ the application is satisfactory to the Board, and is accompanied by the fees required by this Chapter, then the applicant shall be entitled to an examination to determine his or her qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to use the title 'landscape architect' and to practice landscape architecture in North Carolina. Examinations shall be held at least once a year at a time and place to be fixed by the Board which shall determine the subjects and scope of the examination. The Board may adopt rules for administering the examination in one or more parts at the same time or at different times.

(c) The Board, within its discretion, may issue ~~temporary permits pending examinations, or without examination may grant licenses,~~ licenses without examination and licenses by ~~reciprocity,~~ reciprocity or comity to persons holding a license or certificate in landscape architecture from any legally constituted board of examiners in another state or country whose registration requirements are deemed to be equal or equivalent to those of this State.

~~(d) Provided that his application and application fee be received by the Board prior to the first day of July, 1971, any applicant who presents evidence satisfactory to the Board that he was actively engaged in the practice of landscape architecture as herein defined, on or before July 1, 1968, shall be issued a certificate without the requirement for examination.~~

(e) The Board, within its discretion, may grant an honorific title license to persons who have held for a minimum of 20 years a license or certificate in landscape architecture issued by the Board or a legally constituted board of examiners in another state or country whose registration requirements are equal or equivalent to those of this State. The honorific title license shall allow the person to use the title 'landscape architect emeritus', but the person shall not practice landscape architecture or provide expert testimony as a landscape architect in this State unless the person complies with the provisions of this Chapter. There shall be no fee charged for an honorific title license."

Section 6. G.S. 89A-5 reads as rewritten:

"**§ 89A-5. Annual renewal of certificate.**

Every registrant under this Chapter shall, on or before the first day of July in each year, obtain a renewal of a certificate for the ensuing year, by application, accompanied by the required ~~fee; and upon~~ fee. Upon failure to renew, ~~his~~ the certificate shall be automatically ~~revoked; but such~~ revoked. The certificate may be renewed at any time within one year ~~upon payment of the prescribed renewal fee and penalty for late renewal, as provided by this Chapter, upon evidence satisfactory to the Board~~ after its expiration if the applicant pays the required renewal fee and late renewal penalty, and the Board finds that the applicant has not used his or her certificate or title or engaged in the practice of landscape architecture after notice of revocation and is otherwise eligible for registration under the provisions of this Chapter. When necessary to protect the public health, safety, or welfare, the Board

shall require such evidence as it deems necessary to establish the continuing competency of licensees as a condition of license renewal."

Section 7. G.S. 89A-6 reads as rewritten:

"**§ 89A-6. Fees.**

Fees are to be determined by the Board, but shall not exceed the amounts specified herein, however; fees must reflect actual expenses of the Board.

Application	$100.00
Examination	450.00
License by reciprocity or comity	250.00
Annual license renewal	100.00
Late renewal penalty	50.00
Reissue of certificate	25.00
~~Temporary permit~~	~~150.00~~
Corporate certificate	250.00

Fees shall be paid to the Board at the times specified by the Board."

Section 8. G.S. 89A-7 reads as rewritten:

"**§ 89A-7. ~~Refusal, revocation or suspension of certificate.~~ Disciplinary actions.**

~~The Board may, in accordance with the provisions of Chapter 150B of the General Statutes: (i) deny permission to take an examination duly applied for; (ii) deny license after examination for any cause other than failure to pass; (iii) withhold renewal of a license for cause; and (iv) suspend or revoke a license. Grounds for such action or actions shall be dishonest practice, unprofessional conduct, incompetence, conviction of a felony or addiction to habits of such character as to render him unfit to continue professional practice. The procedure for all such actions shall be in accordance with the provisions of Chapter 150B of the General Statutes.~~

(a) The Board may deny or refuse to renew a certificate of registration, suspend, or revoke a certificate of registration if the registrant or applicant:

(1) Obtains a certificate of registration by fraudulent misrepresentation.

(2) Uses or attempts to use another's certificate of registration to practice landscape architecture.

(3) Uses or attempts to use another's name for purposes of obtaining a certificate of registration or practicing landscape architecture.

(4) Has demonstrated gross malpractice or gross incompetency as determined by the Board.

(5) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice landscape architecture or that indicates the person has deceived or defrauded the public.

(6) Has been declared mentally incompetent by a court of competent jurisdiction.

(7) Has willfully violated any of the provisions of this Chapter or the Board's rules.

(b) The Board may require a registrant to take a written or oral examination if the Board finds evidence that the person is not competent to practice landscape architecture as defined in this Chapter.

(c) The Board may take any of the actions authorized in subsection (a) of this section against any firm, partnership, or corporation registered with the Board.

(d) In addition to taking any of the actions authorized in subsection (a) of this section, the Board may assess a civil penalty not in excess of two thousand dollars ($2,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred. Before imposing and assessing a civil penalty and fixing the amount thereof, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist."

Section 9. G.S. 89A-8 reads as rewritten:

"**§ 89A-8. Violation a misdemeanor; injunction to prevent violation.**

(a) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to use, or to hold himself or herself out as entitled to practice ~~under,~~ under the title of landscape architect or landscape architecture or to practice landscape architecture unless he or she is duly registered under the provisions of this Chapter.

(b) The Board may appear in its own name in the courts of the State and apply for injunctions to prevent violations of this Chapter."

Section 10. Article 1 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-4.2G. Employment of attorney for the North Carolina Board of Landscape Architects.**

The Attorney General shall assign an attorney on the Attorney General's staff to serve as advisor to the North Carolina Board of Landscape Architects. The attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. The attorney shall also perform additional duties that may be assigned by the Attorney General."

Section 11. This act becomes effective October 1, 1997.

EXPLANATION OF HOUSE BILL 1110:
Landscape Architects (4th Edition)

TO: Senate Finance Committee
FROM: Committee Staff
DATE July 28, 1997
SPONSOR: Rep. Ed McMahan

Under current law, a person may not use the title "landscape architect" unless the person is registered with the North Carolina Board of Landscape Architects. **House Bill 1110** provides that effective October 1, 1997, no person may engage in the practice of landscape architect without first being registered with the Board. To be registered with the Board, the person must meet all of the following conditions:

- Be at least 18 years of age.
- Be of good moral character.
- Be a graduate of a college curriculum in landscape architecture accredited by the Landscape Architect's Accreditation Board and approved by the North Carolina Board of Landscape Architects.
- Have at least four year's experience in landscape architecture.
- Pass an examination given by the Board.
- Pay the $450 examination fee and the $100 application fee.

A person who practices landscape architecture without first being registered with the Board is guilty of a Class 2 misdemeanor and is subject to a civil penalty assessed by the Board. The penalty may not exceed $2,000.

The practice of landscape architecture means "the preparation of plans and specifications and supervising the execution of projects involving the arranging of land and the elements used thereon for public or private use and enjoyment, embracing drainage, soil conservation, grading and planting plans and erosion control, in accordance with the accepted professional standards of public health, safety and welfare."

The bill makes several other changes to the law concerning landscape architects:

- Requires a firm, partnership, or corporation that engages in the practice of landscape architect to be registered with the Board and to pay the $100 annual registration fee. Any landscape architecture performed by the firm, partnership, or corporation must be done under the direct supervision of an individual registered with the Board.

- Provides that people licensed to practice architecture, engineering, or land surveying do not need to be registered with the Board so long as they do not use the title "landscape architect", "landscape architecture", "landscape arachitectural".
- Expands the exemptions to the registration requirements to include the following: (1) the drafting of plans related to the location of plants on a site; (2) the preparation, sale, or furnishing of plans, and the supervision of the construction of the plans, if the project is a single family residential site, a site of one acre or less, a site of more than one acre where only planting and mulching is required; (3) the preparation of plans, and the supervision of construction of the plans, for a person's own building site.
- Gives the Board a specified list of powers and duties that include (1) the power to examine applicants for registration and registration renewal; (2) the power to determine the qualifications of businesses applying for registration; (3) the power to establish and approve continuing education requirements; (4) and conduct administrative hearings.
- Specifies that an acceptable college curriculum is one accredited by the Landscape Architect's Accreditation Board.
- Increases the years of experience a person must have to be registered as a landscape architect from one year to four years.
- Increases the minimum number of years of education and experience a person must have to be a landscape architect from 7 years to 10 years.
- Gives the Board the authority to grant an "honorific title" to persons who have been registered in landscape architect for a minimum of 20 years. A person with this title may use the title "landscape architect" but the person may not practice landscape architecture.
- Removes the Board's authority to issue temporary permits pending examination.
- Reduces the criminal offense for violating the registration requirements from a Class 1 misdemeanor to a Class 2 misdemeanor.
- Authorizes the Board to assess civil penalties.
- Provides that the Attorney General must assign an attorney on his staff to serve as advisor to the Board.

FISCAL ANALYSIS MEMORANDUM

DATE: July 25, 1997

TO: Senate Finance Committee

FROM: Richard Bostic
Fiscal Research Division

RE: HB 1110 - Landscape Architects (Fourth Edition)

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	-	-	-	-	-

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Landscape Architects

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: The act increases the regulatory power of the North Carolina Board of Landscape Architects.

ASSUMPTIONS AND METHODOLOGY: The Board anticipates no change in the number of persons applying for a Landscape Architect license as a result of this bill. Except for the deletion of a temporary permit, **the fees in G.S. 89A-6 are unchanged (section 7).** The attorney for the Board of Landscape Architects mentioned in section 10 is already provided by the Attorney General.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 866*
Committee Substitute Favorable 4/10/97

Short Title: Carteret and Moore School Board Election. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE CARTERET COUNTY BOARD OF EDUCATION FROM FIVE TO SEVEN MEMBERS AND TO PROVIDE THAT THEIR DISTRICTS ARE THE SAME AS FOR THE BOARD OF COMMISSIONERS, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM; AND TO PROVIDE THAT FIVE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED FROM THE SAME DISTRICTS AS ARE THE MEMBERS OF THE BOARD OF COMMISSIONERS AND THE REMAINING THREE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED AT LARGE, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

PART I. CARTERET COUNTY BOARD OF EDUCATION

Section 1. (a) Effective July 1, 1998, the Board of Education of Carteret County consists of seven members.

(b) One member of the Carteret County Board of Education shall be elected each from Districts 1, 2, 4, 5, and 6 as established for the Carteret County Board of Commissioners by Chapter 113 of the Session Laws of 1993, and two members of the Carteret County Board of Education shall be elected from District 3 as established for the Carteret County Board of Commissioners by Chapter 113 of the Session Laws of 1993.

(c) Of the existing members, Roger Newby is assigned to District 2, Rodney Kemp and Kim Willis are assigned to District 3, Ellen Piner is assigned to District 5, and June Fulcher is assigned to District 6. In 1998, one member shall be elected from each of Districts 1, 3, 5, and 6 for a four-year term, and one member from District 4 for a two-year term. In 2000 and quadrennially thereafter, one member shall be elected from Districts 2, 3, and 4 for a four-year term. In 2002 and quadrennially thereafter, one member shall be elected from Districts 1, 3, 5, and 6 for a four-year term.

(d) Members shall reside in and represent the districts, but all members are elected by the voters of the county at large in nonpartisan plurality elections at the time of the primary election and take office on July 1 of the year of election, all as previously provided by law.

Section 2. The Carteret County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 1 this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Expansion of the Carteret County Board of Education to seven members and election from the same districts as the Carteret County Board of Commissioners."

If a majority of the votes cast are FOR the question, then Section 1 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 1 of this act does not become effective.

Section 3. Notwithstanding any provision of Section 1(d) of this act or Chapter 774 of the 1991 Session Laws, the members of the Carteret County Board of Education shall be elected on a partisan basis at the same time as county officers. To the extent that they do not conflict with this act and that act, the elections shall be conducted in accordance with Chapters 115C and 163 of the General Statutes. Vacancies on the Board of Education for positions elected on a nonpartisan basis in 1994 and 1996 shall be filled in accordance with G.S. 115C-37(f). Vacancies on the Board of Education for positions elected on a partisan basis shall be filled in accordance with G.S. 115C-37.1. Beginning in 1998 members elected shall take office and qualify on the first Monday in December of the year of their election, and the terms of their predecessors shall expire at that same time.

Section 4. The Carteret County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 3 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Election of the Carteret County Board of Education on a partisan basis."

If a majority of the votes cast are FOR the question, then Section 3 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 3 of this act does not become effective.

PART II. MOORE COUNTY BOARD OF EDUCATION

Section 5. (a) The Board of Education of Moore County consists of eight members.

(b) One member of the Moore County Board of Education shall be elected each from Electoral Districts 1, 2, 3, 4, and 5 for members of the Moore County Board of Commissioners as those districts existed on January 1, 1997 and three members of the Moore County Board of Education shall be elected from the County at large.

(c) Of the existing Moore County Board of Education members, Mike Ritter is assigned to District 1, Ken Baer is assigned to District 2, Bill Garner is assigned to District 3, and Linda McCaskill is assigned to District 4, and Dianne Lawrence is assigned to District 5. In 1998 and quadrennially thereafter, a member shall be elected from District 3 and three members shall be elected from the county at large for four year terms. In 2000 and quadrennially thereafter, members shall be elected from Districts 1, 2, 4, and 5 for four year terms.

(d) Members shall reside in and represent the districts, but all members are elected by the voters of the county at large by the nonpartisan primary and election method, all as previously provided by law.

Section 6. The Moore County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 5 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Providing that five of the Moore County Board of Education members have the same districts as the Moore County Board of County Commissioners and that three of the Moore County Board of Education members be elected at large."

If a majority of the votes cast are FOR the question, then Section 5 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 5 of this act does not become effective.

Section 7. Notwithstanding any provision of Section 5(d) of this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the members of the Moore County Board of Education shall be elected on a partisan basis at the same time as county officers. To the extent that they do not conflict with this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the elections shall be conducted in accordance with Chapters 115C and 163 of the General Statutes. Vacancies on the Board of Education for positions elected on a nonpartisan basis in 1994 and 1996 shall be filled in accordance with G.S. 115C-37(f). Vacancies on the Board of Education for positions elected on a partisan basis shall be filled in accordance with G.S. 115C-37.1.

Section 8. Moore County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 7 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Election of the Moore County Board of Education on a partisan basis."

If a majority of the votes cast are FOR the question, then Section 7 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 7 of this act does not become effective.

Section 9. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 866*
Committee Substitute Favorable 4/10/97
Proposed Senate Committee Substitute H866-PCS4144

Short Title: Moore/Carteret School Board Election. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT FIVE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED FROM THE SAME DISTRICTS AS ARE THE MEMBERS OF THE BOARD OF COMMISSIONERS AND THE REMAINING THREE MEMBERS OF THE MOORE COUNTY BOARD OF EDUCATION BE ELECTED AT LARGE, SUBJECT TO A REFERENDUM, AND TO PROVIDE FOR PARTISAN ELECTIONS, SUBJECT TO A REFERENDUM, AND TO EXPAND THE CARTERET COUNTY BOARD OF EDUCATION FROM FIVE TO SEVEN MEMBERS, AND TO PROVIDE THAT THEIR DISTRICTS ARE THE SAME AS FOR THE BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. (a) The Board of Education of Moore County consists of eight members.

(b) One member of the Moore County Board of Education shall be elected each from Electoral Districts 1, 2, 3, 4, and 5 for members of the Moore County Board of Commissioners as those districts existed on January 1, 1997, and three members of the Moore County Board of Education shall be elected from the County at large.

(c) Of the existing Moore County Board of Education members, Mike Ritter is assigned to District 1; Ken Baer is assigned to District 2; Bill Garner is assigned to District 3; Linda McCaskill is assigned to District 4; and Dianne Lawrence

is assigned to District 5. In 1998 and quadrennially thereafter, a member shall be elected from District 3 and three members shall be elected from the county at large for four-year terms. In 2000 and quadrennially thereafter, members shall be elected from Districts 1, 2, 4, and 5 for four-year terms.

(d) Members shall reside in and represent the districts, but all members are elected by the voters of the county at large by the nonpartisan primary and election method, all as previously provided by law.

Section 2. The Moore County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 1 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Providing that five of the Moore County Board of Education members have the same districts as the Moore County Board of County Commissioners and that three of the Moore County Board of Education members be elected at large."

If a majority of the votes cast are FOR the question, then Section 1 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 1 of this act does not become effective.

Section 3. Notwithstanding any provision of Section 1(d) of this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the members of the Moore County Board of Education shall be elected on a partisan basis at the same time as county officers. To the extent that they do not conflict with this act, Chapter 882 of the 1967 Session Laws, or Chapter 442 of the 1977 Session Laws, the elections shall be conducted in accordance with Chapters 115C and 163 of the General Statutes. Vacancies on the Board of Education for positions elected on a nonpartisan basis in 1994 and 1996 shall be filled in accordance with G.S. 115C-37(f). Vacancies on the Board of Education for positions elected on a partisan basis shall be filled in accordance with G.S. 115C-37.1.

Section 4. Moore County Board of Elections shall conduct an election on November 4, 1997, on the question of approval of Section 3 of this act. The question on the ballot shall be:

"[ ] FOR [ ] AGAINST

Election of the Moore County Board of Education on a partisan basis."

If a majority of the votes cast are FOR the question, then Section 3 of this act becomes effective. If less than a majority of the votes cast are FOR the question, then Section 3 of this act does not become effective.

Section 5. (a) Effective July 1, 1998, the Board of Education of Carteret County consists of seven members.

(b) One member of the Carteret County Board of Education shall be elected each from Districts 1, 2, 4, 5, and 6 as established for the Carteret County Board of Commissioners by Chapter 113 of the Session Laws of 1993, and two members of the Carteret County Board of Education shall be elected from District 3 as established for the Carteret County Board of Commissioners by Chapter 113 of the Session Laws of 1993.

(c) Of the existing members, Roger Newby is assigned to District 2, Rodney Kemp and Kim Willis are assigned to District 3, Ellen Piner is assigned to District 5, and June Fulcher is assigned to District 6. In 1998, one member shall be elected from each of Districts 1, 3, 5, and 6 for a four-year term, and one member from District 4 for a two-year term. In 2000 and quadrennially thereafter, one member shall be elected from Districts 2, 3, and 4 for a four-year term. In 2002 and quadrennially thereafter, one member shall be elected from Districts 1, 3, 5, and 6 for a four-year term.

(d) Members shall reside in and represent the districts, but all members are elected by the voters of the county at large in nonpartisan plurality elections at the time of the primary election and take office on July 1 of the year of election, all as previously provided by law.

Section 6. This act is effective when it becomes law.

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 4/30/'97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	DOR
	DCHNR
Dick McKee	Mack of Times
Jerry Roberts	C.U.C.A.
Kevin O'Donnell	Nash Utility Svc., Inc
Charles Francis	Woods & Francis
Gray Styers	Kilpatrick Stockton
	NCBA
R. Paul Wilms	NCHBA
Alice Garland	EC
Ron Aycock	NCACC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/30/'97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Hawkins	Citizen
Danny Rayford	NCCUCA
Jim Hoard	Public Staff
Tony Wike	Public Staff
Stuart Dixon	NCNG
George Long	NCDOR
Patti Seawell	"
[illegible] Underwood	"
Carrie Hartley	office of Gov
Greg Rudford	NCDOR
[illegible] Manning	NCDOR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/30/97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Regan	N.C.A.C.C.
Leslie Beracqua	NCCBI
Claus Von Bulow	Cherry Hill, N.J.
Tim KENT	American Institute of Architects
Ed Adams	Δ Transit Authority + C&C/NC
Katherine Davis	ElectriCities of NC
Jay Robertson	VP Assoc.

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

REVISED REPORT

Thursday, July 31, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #2)**1110** Landscape Architects
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**418** Mt. Airy/Avery Occup. Tax Alleghany/Norwood
Draft Number: PCS6310
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

H.B.(CS #1)**866** Carteret and Moore School Board Election
Draft Number: PCS4144
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comment: Bills taken up 7-30-97

SENATE FINANCE COMMITTEE

THURSDAY, JULY 31, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met on July 31, 1997, with Senator Kerr presiding. There were 27 committee members present.

S.B. 39 - Modify Setoff Debt Collection

This bill had previously been discussed in Finance and was given a favorable report, was re-referred to Appropriations and sent back to Finance. A committee substitute on this bill was explained by Martha Harris, Staff Attorney, and on motion by Senator Ballantine, the committee substitute was adopted by the committee. Senator Hoyle moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill, committee substitute, explanation and fiscal note included in the minutes.

S.B. 841 - Modify Corporate Dividend Taxation

Senator Hoyle was recognized to explain this bill which had been discussed in the Wednesday, July 30th meeting. Senator Winner moved for a "favorable" report for the committee substitute and the motion carried. Copy of committee substitute included in the minutes.

H.B. 1097 - Fisheries Reform Act-2

Representative Preston and Representative Redwine were recognized as sponsors of the bill and spoke briefly on the bill. Senator Kerr announced that there were several amendments that would be offered in addition to the amendment that was adopted on Tuesday. Senator McDaniel sent forth Amendment # 2 and moved for its adoption. The motion carried and the amendment was adopted. Senator Cochrane sent forth an amendment (#3) and on her motion the amendment was adopted by the committee. Senator Cochrane sent forth another amendment (#4) and on her motion, this amendment was adopted by the committee. Senator Phillips sent forth an amendment (#5) and moved for its adoption. The motion carried and the amendment was adopted by the committee. Senator Perdue sent forth an amendment (#6) and moved for its adoption. The motion carried. After explanation and discussion on this amendment, Senator Perdue pulled this amendment and it was not voted on by the committee. Senator Lee was recognized to offer an amendment (#7) and on his motion the amendment was adopted by the committee. After further discussion by the committee members, on motion by Senator Gulley the bill, as amended, was given a "favorable" report by the committee and will be re-referred to Appropriations. Copy of bill, committee substitute, amendments, information and fiscal note included in the minutes.

H.B. 1231 - Local Transit Revenue Options

Representative Minor was recognized as the bill sponsor and Representative McMahan was recognized to explain this bill. At the conclusion of Representative McMahan's explanation, Senator Gulley was recognized and spoke in favor of the bill. There was a general discussion on this bill with questions from the committee members to the bill sponsor and to staff.

Senator Kerr introduced Glenn Jernigan, representing the car rental industry and specifically Dollar Rent A Car, who spoke in opposition to the increasing of taxing of car rentals in the bill.

Paul Cox, General Manager of the Wyndom Garden Hotel in the Research Triangle Park and also the President of the Triangle Motel Hotel Association spoke on the bill and expressed opposition to a targeted tax on car rentals.

Senator Kerr announced that this meeting would recess for session and would reconvene 15 minutes after session.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

Attachment # 1

AGENDA

SENATE FINANCE COMMITTEE

THURSDAY, JULY 31, 1997

Room 544 - 8:30 A.M.

S.B. 39 - Modify Setoff Debt Collection - Sen. L. Shaw

S.B. 841 - Modify Corporate Dividend Taxation - Sen. Hoyle

H.B. 1097 - Fisheries Reform Act-2 - Rep. Preston

H.B. 1231 - Local Transit Revenue Options - Rep. Minor

TIME PERMITTING:

H.B. 1156 - March of Dimes/School Tech. Plates - Rep. Morris

S.B. 886 - Trucking Adjustment Act of 1997 - Sen. Jordan

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 39
Finance Committee Substitute Adopted 4/9/97

Short Title: Modify Setoff Debt Collection. (Public)

Sponsors:

Referred to: Appropriations.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE SETOFF DEBT COLLECTION ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105A of the General Statutes reads as rewritten:

"Chapter 105A.

"Setoff Debt Collection Act.

~~"ARTICLE 1.~~

~~"In General.~~

"§ 105A-1. Purposes.

The purpose of this ~~Article~~ Chapter is to establish as policy that all claimant agencies and the Department of Revenue shall cooperate in identifying debtors who owe money to the State or to a local government through ~~its~~ their various ~~claimant~~ agencies and who qualify for refunds from the Department of Revenue. It is also the intent of this ~~Article~~ Chapter that procedures be established for setting off against any ~~such~~ refund the sum of any debt owed to the ~~State.~~ State or to a local government. Furthermore, it is the legislative intent that this ~~Article~~ Chapter be liberally construed so as to effectuate these purposes as far as legally and practically possible.

"§ 105A-2. Definitions.

The following definitions apply in this Chapter:

(1) Claimant agency. -- Either of the following:

a. A State agency.

b. A local agency acting through a clearinghouse or an organization pursuant to G.S. 105A-3(b1).

(2) Debt. -- Any of the following:
a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.
b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security Act.
c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5 of the General Statutes.
d. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:
1. The Aid to Families with Dependent Children Program or the Aid to Families with Dependent Children. -- Emergency Assistance Program, enabled by Chapter 108A, Article 2, Part 2 of the General Statutes.
2. The Work First Cash Assistance Program established pursuant to federal waivers received by the Department of Human Resources on February 5, 1996.
3. The State-County Special Assistance for Adults Program, enabled by Chapter 108A, Article 2, Part 3 of the General Statutes.

(3) Debtor. -- An individual who owes a debt.
(4) Department. -- The Department of Revenue.
(5) Reserved.
(6) Local agency. -- A county, to the extent it is not considered a State agency, or a municipality.
(7) Net proceeds collected. -- Gross proceeds collected through setoff against a debtor's refund minus the collection assistance fee retained by the Department.
(8) Refund. -- An individual's North Carolina income tax refund.
(9) State agency. -- Any of the following:
a. A unit of the executive, legislative, or judicial branch of State government.
b. A county, to the extent it administers a program supervised by the Department of Human Resources, or it operates a Child Support Enforcement Program, enabled by Chapter

110, Article 9, and Title IV, Part D of the Social Security Act.

~~As used in this Article:~~

~~(1)~~ ~~"Claimant agency" means and includes:~~

~~a. The State Education Assistance Authority as enabled by Article 23 of Chapter 116 of the General Statutes;~~

~~b. The North Carolina Department of Human Resources when in the exercise of its authority to collect health profession student loans made pursuant to G.S. 131-121;~~

~~c. The North Carolina Department of Human Resources when in the performance of its duties under the Medical Assistance Program enabled by Chapter 108A, Article 2, Part 6, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Medical Assistance Program collection functions;~~

~~d. The North Carolina Department of Human Resources when in the performance of its duties, under the Child Support Enforcement Program as enabled by Chapter 110, Article 9 and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support arrearages owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties;~~

~~e. The University of North Carolina, including its constituent institutions as specified by G.S. 116-2(4);~~

~~f. The University of North Carolina Hospitals at Chapel Hill in the conduct of its financial affairs and operations pursuant to G.S. 116-37;~~

~~g. The Board of Governors of the University of North Carolina and the State Board of Education through the College Scholarship Loan Committee when in the performance of its duties of administering the Scholarship Loan Fund for Prospective College Teachers enabled by Chapter 116, Article 5;~~

~~h. The Office of the North Carolina Attorney General on behalf of any State agency when the claim has been reduced to a judgment;~~

~~i. The State Board of Community Colleges through community colleges as enabled by Chapter 115D in the conduct of their financial affairs and operations;~~

~~j. State facilities as listed in G.S. 122C-181(a), School for the Deaf at Morganton, North Carolina Sanatorium at McCain,~~

~~Western Carolina Sanatorium at Black Mountain, Eastern North Carolina Sanatorium at Wilson, and Gravely Sanatorium at Chapel Hill under Chapter 143, Article 7; Governor Morehead School under Chapter 115, Article 40; Central North Carolina School for the Deaf under Chapter 115, Article 41; Wright School for Treatment and Education of Emotionally Disturbed Children under Chapter 122C; and these same institutions by any other names by which they may be known in the future;~~

~~k.~~ ~~The North Carolina Department of Revenue;~~

~~l.~~ ~~The Administrative Office of the Courts;~~

~~m.~~ ~~The Division of Forest Resources of the Department of Environment, Health, and Natural Resources;~~

~~n.~~ ~~The Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan, established in Article 3 of General Statutes Chapter 135;~~

~~o.~~ ~~The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the Scholarship Loan Fund for Prospective Teachers enabled by Chapter 115C, Article 32A and the scholarship loan and grant programs enabled by Chapter 115C, Article 24C, Part 1;~~

~~p.~~ ~~The Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Governmental Employees' Retirement System in the performance of their duties pursuant to Chapters 120, 128, 135 and 143 of the General Statutes;~~

~~q.~~ ~~The North Carolina Teaching Fellows Commission in the performance of its duties pursuant to Chapter 115C, Article 24C, Part 2;~~

~~r.~~ ~~The North Carolina Department of Human Resources when in the performance of its collection duties for intentional program violations and violations due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Food Stamp Program collection functions.~~

~~The North Carolina Department of Human Resources when, in the performance of its duties under the Aid to Families with Dependent Children Program or the Aid to Families with Dependent Children -- Emergency Assistance Program provided in Part 2 of Article 2 of Chapter 108A or the Work First Cash Assistance Program established pursuant to~~

~~the federal waivers received by the Department on February 5, 1996, or under the State-County Special Assistance for Adults Program provided in Part 3 of Article 2 of Chapter 108A, it seeks to collect public assistance payments obtained through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error;~~

~~s. The Employment Security Commission of North Carolina.~~

~~t. Any State agency in the collection of salary overpayments from former employees.~~

~~u. The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the program under which the State encourages participation in the National Board for Professional Teaching Standards (NBPTS) Program, enabled by Section 19.28 of Chapter 769 of the 1993 Session Laws.~~

~~(2) "Debtor" means any individual owing money to or having a delinquent account with any claimant agency which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.~~

~~(3) "Debt" means any liquidated sum due and owing any claimant agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum.~~

~~(4) "Department" means the North Carolina Department of Revenue.~~

~~(5) "Refund" means any individual's North Carolina income tax refund.~~

~~(6) "Net proceeds collected" means gross proceeds collected through final setoff against a debtor's refund minus any collection assistance fee charged by the Department.~~

"§ 105A-3. Remedy additional; mandatory State usage; optional local usage; obtaining identifying ~~information.~~ information; registration.

(a) Remedy Additional. -- The collection remedy under this ~~Article~~ Chapter is in addition to and not in substitution for any other remedy available by law.

(b) Mandatory State Usage. -- ~~All claimant agencies shall submit, for collection under the procedure established by this Article, all debts which they are owed, except debts that they are advised by~~ A State agency must submit a debt owed to it for collection under this Chapter unless the State Controller has waived this requirement or the Attorney General has advised the State agency not to submit the debt because the validity of the debt is legitimately in dispute, because an alternative means of collection is pending and believed to be adequate, or because such a collection attempt would result in a loss of federal funds. The State Controller may waive the requirement for a State agency, other than the Department of Human Resources or a county acting on behalf of that Department, to submit a debt owed to it for collection

under this Chapter if the State Controller finds that collection by this means would not be practical or cost-effective. A waiver may apply to all debts owed a State agency or a type of debt owed a State agency.

(b1) Optional Local Usage. -- A local agency may submit a debt owed to it for collection under this Chapter. A local agency that decides to submit a debt owed to it for collection under this Chapter must establish the debt by following the procedure set in G.S. 105A-5 and must submit the debt through one of the following:

(1) A clearinghouse that is established pursuant to an interlocal agreement adopted under Article 20 of Chapter 160A of the General Statutes and has agreed to submit debts on behalf of any requesting local agency.

(2) The North Carolina League of Municipalities.

(3) The North Carolina Association of County Commissioners.

(c) Identifying Information. -- All claimant agencies shall whenever possible obtain the full name, social security number, address, and any other identifying information required by ~~rules promulgated by~~ the Department ~~pursuant to G.S. 105A-16~~ from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under this ~~Article.~~ Chapter.

(d) Registration and Reports. -- A ~~claimant~~ State agency must register with the Department and with the State Controller. Every State agency must report annually to the ~~Department~~ State Controller the amount of debts owed to the agency for which the agency did not submit a claim for setoff and the reason for not submitting the claim.

A clearinghouse or an organization that submits debts on behalf of a local agency must register with the Department. Once a clearinghouse registers with the Department under this subsection, no other clearinghouse may register to submit debts for collection under this Chapter.

"§ 105A-4. Minimum ~~sum collectible.~~ debt and refund.

~~A claimant agency shall not be allowed to effect final setoff and collect debts through use of the remedy established under this Article unless both the debt and the refund, if any, are~~ This Chapter applies only to a debt that is at least fifty dollars ~~($50.00).~~ ($50.00) and to a refund that is at least this same amount.

"§ 105A-5. Local agency notice, hearing, and decision.

(a) Prerequisite. -- A local agency may not submit a debt for collection under this Chapter until it has given the notice required by this section, and the claim has been finally determined as provided in this section.

(b) Notice. -- A local agency must send written notice to a debtor that the agency intends to submit the debt owed by the debtor for collection by setoff. The notice must explain the basis for the agency's claim to the debt and that the agency intends to apply the debtor's refund against the debt. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing with the local agency, must state the time limits and procedure for requesting the

hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt.

(c) Administrative Review. -- A debtor who decides to contest a proposed setoff must file a written request for a hearing with the local agency within 30 days after the date the local agency mails a notice of the proposed action to the debtor. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. The governing body of the local agency or a person designated by the governing body must hold the hearing.

If the debtor disagrees with the decision of the governing body or the person designated by the governing body, the debtor may file a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The petition must be filed within 30 days after the debtor receives a copy of the local decision. Notwithstanding the provisions of G.S. 150B-2, a local agency is considered an agency for purposes of contested cases and appeals under this Chapter.

In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(d) Decision. -- A decision made after a hearing under this section must determine whether a debt is owed to the local agency and the amount of the debt.

(e) Return of Amount Setoff. -- If a local agency submits a debt for collection under this Chapter without sending the notice required by subsection (b) of this section, the agency must send the taxpayer the entire amount set off plus the collection assistance fee retained by the Department. Similarly, if a local agency submits a debt for collection under this Chapter after sending the required notice but before final determination of the debt, and a decision finds that the local agency is not entitled to any part of the amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance fee retained by the Department. That portion of the amount returned that reflects the collection assistance fee must be paid from the local agency's funds.

If a local agency submits a debt for collection under this Chapter after sending the required notice and the net proceeds collected that are credited to the local agency for the debt exceed the amount of the debt, the local agency must send the balance to the debtor. No part of the collection assistance fee retained by the Department may be returned when a notice was sent and a debt is owed but the debt is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-266. A local agency that returns a refund to a taxpayer under this subsection must pay from the local agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer.

~~**Collection of sums due claimant agencies through setoff.**~~

~~Subject to the limitations contained in this Article, the Department of Revenue shall upon request render assistance in the collection of any delinquent account or debt owing to any claimant agency. This assistance shall be provided by setting off~~

~~any refunds due the debtor from the Department by the sum certified by claimant agency as due and owing.~~

"§ 105A-6. Procedure ~~for~~ Department to follow in making setoff.

(a) Notice to Department. -- A claimant agency seeking to attempt collection of a debt through setoff ~~shall~~ must notify the Department in writing and supply ~~(i)~~ information necessary to identify the debtor whose refund is sought to be set ~~off and (ii)~~ off. The claimant agency may include with the notification the date, if any, that the debt is expected to expire. ~~Notification to the Department and the furnishing of identifying information must occur on or before a date specified by the Department in the first year preceding the calendar year during which the refund would be paid. The notice is effective to initiate setoff against refunds that would be made in calendar years following the year in which the notice was first made until the date specified in the notice that the debt is expected to expire.~~ The agency ~~shall~~ must notify the Department in writing when a debt has been paid or is no longer owed the agency.

(b) Setoff by Department. -- The Department, upon receipt of notification, ~~shall~~ must determine each year whether the debtor to the claimant agency is entitled to a refund of at least fifty dollars ($50.00) from the Department. Upon determination by the Department that a debtor specified by a claimant agency qualifies for such a refund, the Department ~~shall notify in writing the claimant agency that a refund is pending, specify its sum, and indicate the debtor's address as listed on the tax return.~~

~~(c) Unless stayed by court order, the Department shall, upon certification as provided in this Article,~~ must set off the ~~certified~~ debt against the refund to which the debtor would otherwise be ~~entitled.~~ entitled and must refund any remaining balance to the debtor. The Department must mail the debtor written notice that the setoff has occurred and must credit the net proceeds collected to the claimant agency. If the claimant agency is a State agency, that agency must credit the amount received to a nonreverting trust account and must follow the procedure set in G.S. 105A-8.

~~**"§ 105A-7. Notification of intention to set off and right to hearing.**~~

~~(a) The claimant agency, upon receipt of notification from the Department that a debtor is entitled to a refund, shall within 10 days send a written notification to the debtor and a copy of same to the Department of its assertion of rights to the refund or any part thereof. Such notification shall inform the debtor of the claimant agency's intention to direct the Department to apply the refund or any portion thereof against the debt certified as due and owing. For the Department to be obligated to continue holding refunds until receipt of certification of the debt, if any, pursuant to G.S. 105A-10, the copy of the notification to the debtor by the claimant agency of its intention to set off must be received by the Department within 15 days of the date of the Department's mailing to the respective claimant agency the notification of the debtor's entitlement to a refund.~~

~~(b) The contents of the written notification to the debtor (and the Department's copy) of the setoff claim shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt to the claimant agency, the debtor's opportunity to give written notice of intent to contest the validity of the claim within~~

~~30 days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the 30-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.~~

~~(c) The written application by the debtor for a hearing shall be effective upon mailing the application postage prepaid and properly addressed to the claimant agency.~~

"§ 105A-8. ~~Hearing procedure.~~ State agency notice, hearing, decision, and refund of setoff.

(a) Notice. -- Within 10 days after a State agency receives a refund of a debtor, the agency must send the debtor written notice that the agency has received the debtor's refund. The notice must explain the debt that is the basis for the agency's claim to the debtor's refund and that the agency intends to apply the refund against the debt. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt. A State agency that does not send a debtor a notice within the time required by this subsection must refund the amount set off plus the collection assistance fee, in accordance with subsection (e) of this section.

(c) Hearing. -- A hearing on a contested claim of a State agency, except a constituent institution of The University of North Carolina or the Employment Security Commission, must be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The University of North Carolina must be conducted in accordance with administrative procedures approved by the Attorney General. A hearing on a contested claim of the Employment Security Commission must be conducted in accordance with rules adopted by that Commission. A request for a hearing on a contested claim of any State agency must be filed within 30 days after the State agency mails the debtor notice of the proposed setoff. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(d) Decision. -- A decision made after a hearing under this section must determine whether a debt is owed to the State agency and the amount of the debt.

(e) Return of Amount Set Off. -- If a State agency fails to send the notice required by subsection (a) of this section within the required time or a decision finds that a State agency is not entitled to any part of an amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance fee retained by the Department. That portion of the amount returned that reflects the collection assistance fee must be paid from the State agency's funds.

If a debtor owes a debt to a State agency and the net proceeds credited to the State agency for the debt exceed the amount of the debt, the State agency must send the balance to the debtor. No part of the collection assistance fee retained by the

Department may be returned when a debt is owed but it is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-266. A State agency that returns a refund to a taxpayer under this subsection must pay from the State agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer.

~~(a) A hearing on a contested claim, other than a claim of a constituent institution of The University of North Carolina, or a claim of the Employment Security Commission of North Carolina, shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The University of North Carolina shall be conducted in accordance with administrative procedures approved by the Attorney General. A hearing on a contested claim of the Employment Security Commission of North Carolina shall be conducted in accordance with regulations adopted by the Employment Security Commission of North Carolina. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made.~~

~~(b) Pending final determination at hearing of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection through the setoff procedure allowed under this Article.~~

~~(c) No issues may be considered at the hearing which have been previously litigated.~~

"§ 105A-9. Appeals from hearings.

Appeals from ~~action taken at~~ hearings allowed under this ~~Article~~ Chapter, other than those conducted by the Employment Security Commission, shall be in accordance with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of initial judicial review shall be the superior court for the county in which the debtor resides. Appeals from ~~actions~~ hearings allowed under this ~~Article~~ Chapter that are conducted by the Employment Security Commission of North Carolina shall be in accordance with the provisions of Chapter 96 of the General Statutes.

~~**"§ 105A-10. Certification of debt by claimant agency; finalization of setoff.**~~

~~(a) Upon final determination through hearing provided by G.S. 105A-8 of the debt due and owing the claimant agency or upon the debtor's default for failure to comply with G.S. 105A-7 mandating timely request for review of the asserted basis for setoff, the claimant agency shall within 20 days certify the debt to the Department and in default thereof, the Department shall no longer be obligated to hold the refund for setoff.~~

~~(b) Upon receipt by the Department of a certified debt from the claimant agency, the Department shall finalize the setoff by transferring the net proceeds collected for credit or payment in accordance with the provisions of G.S. 105A-14 and by refunding any remaining balance to the debtor as if setoff had not occurred.~~

~~**"§ 105A-11. Notice of final setoff.**~~

~~Upon the finalization of setoff under the provisions of this Article, the Department shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when disbursed.~~

"§ 105A-12. Priorities in claims to setoff.

~~Priority in multiple claims to refunds allowed to be set off under the provisions of this Article shall be in the order in time which a claimant agency has filed a written notice with the Department of its intention to effect collection through setoff under this Article. Notwithstanding the priority set forth above according to time of filing,~~ ~~the~~ The Department has priority over all other claimant agencies for collection by setoff whenever it is a competing agency for a refund. The Department of Human Resources and the counties that are acting on behalf of that Department and are therefore considered to be State agencies have priority over all other State agencies except the Department of Revenue. State agencies have priority over local agencies for collection by setoff. When there are multiple claims by State agencies that do not have priority over other State agencies, the claims have priority based on the date each agency registered with the Department under G.S. 105A-3. When there are multiple claims by two or more organizations submitting debts on behalf of local agencies, the claims have priority based on the date each organization registered with the Department under G.S. 105A-3. When there are multiple claims among local agencies whose debts are submitted by the same organization, the claims have priority based on the date each local agency requested the organization to submit debts on its behalf.

"§ 105A-13. ~~Disposition of proceeds collected; collection~~ Collection assistance fees.

~~(a) Upon effecting final setoffs, the Department shall periodically write checks to the respective claimant agencies for the net proceeds collected on their behalf.~~

~~(b) Each year the Department shall determine its actual cost of collection under the Setoff Debt Collection Act for the immediately preceding year and shall calculate the percentage that cost represents of the preceding year's collections, excluding collections of child support arrearages under G.S. 105A-2(1)d. The Department shall retain that percentage from the gross proceeds collected by the Department through setoff for the current year, other than the gross proceeds collected of child support arrearages under G.S. 105A-2(1)d.~~ To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of no more than fifteen dollars ($15.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The Department must set the amount of the collection assistance fee based on its actual cost of collection under this Chapter for the immediately preceding year. If the Department is able to collect only part of a debt through setoff, the collection assistance fee has priority over the remainder of the debt. The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

"**§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.**

(a) Simultaneously with the transmittal of ~~a check for~~ the net proceeds collected to a claimant agency, the Department ~~shall~~ must provide the agency with an accounting of the setoffs ~~finalized~~ for which payment is being made. The accounting ~~shall,~~ must, whenever possible, include the full names of the debtors, the debtors' social security numbers, the gross proceeds collected per ~~individual~~ setoff, the net proceeds collected per setoff, and the collection assistance fee added to the debt and collected ~~charged~~ per setoff.

(b) Upon receipt by a claimant agency of ~~a check representing~~ net proceeds collected on ~~a~~ the claimant agency's behalf by the ~~Department~~ Department, a final determination of the claim if it is a State agency claim, and an accounting of the proceeds as specified under this section, the claimant agency ~~shall~~ must credit the debtor's obligation with the ~~gross~~ net proceeds collected.

"**§ 105A-15. Confidentiality exemption; nondisclosure.**

(a) Notwithstanding G.S. 105-259 or any other provision of law prohibiting disclosure by the Department of the contents of taxpayer records or information and notwithstanding any confidentiality statute of any claimant agency, ~~all~~ the exchange of any information ~~exchanged~~ among the Department, the claimant agency, the organization submitting debts on behalf of a local agency, and the debtor necessary to ~~accomplish and effectuate the intent of this Article~~ implement this Chapter is lawful.

(b) The information ~~obtained by~~ a claimant agency or an organization submitting debts on behalf of a local agency obtains from the Department in accordance with the exemption allowed by subsection (a) ~~shall only~~ may be used by ~~a claimant~~ the agency or organization only in the pursuit of its debt collection duties and ~~practices and any person employed by, or formerly employed by, a claimant agency who discloses any such information for any other purpose, except as otherwise allowed by G.S. 105-259, shall be penalized in accordance with the terms of that statute.~~ practices and may not be disclosed except as provided in G.S. 105-259, 153A-148.1, or 160A-208.1.

"**§ 105A-16. ~~Rules and regulations.~~ Rules.**

The Secretary of Revenue ~~is authorized to prescribe forms and make all rules which he deems necessary in order to effectuate the intent of this Article.~~ may adopt rules to implement this Chapter. The State Controller may adopt rules to implement this Chapter."

Section 2. G.S. 105-266(b) reads as rewritten:

"(b) Interest. -- An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A refund sent to a taxpayer is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is mailed.

A refund set off against a debt pursuant to Chapter 105A of the General Statutes is considered paid five days after the Department mails the taxpayer a notice of the setoff, unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the setoff to return the refund to the taxpayer. In this circumstance, the refund that was set off is not considered paid until five days after the agency that requested the refund mails the taxpayer a check for the refund.

Interest on an overpayment of a tax, other than a tax levied under Article 4 or Article 8B of this Chapter, accrues from a date 90 days after the date the tax was originally paid by the taxpayer until the refund is paid. Interest on an overpayment of a tax levied under Article 4 or Article 8B of this Chapter accrues from a date 45 days after the latest of the following dates until the refund is paid:

(1) The date the final return was filed.

(2) The date the final return was due to be filed.

(3) The date of the overpayment.

The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code."

Section 3. The General Assembly finds that the Department of Human Resources will incur extraordinary one-time costs for automation in administering the requirements of this act because the various divisions of the Department of Human Resources and the county agencies through which they administer their programs have an extraordinary number of debts that they are required by law to collect through setoff. Accordingly, there is appropriated from the General Fund to the Department of Human Resources the sum of $X for the 1998-99 fiscal year for one-time automation costs and related costs of administering the requirements of this act. These funds shall not revert but shall remain available to the Department of Human Resources until used for this purpose.

Section 4. The General Assembly finds that the Department of Human Resources will incur extraordinary recurring costs for personnel in administering the requirements of this act because the various divisions of the Department of Human Resources and the county agencies through which they administer their programs have an extraordinary number of debts that they are required by law to collect through setoff. Accordingly, it is the intent of the General Assembly to appropriate to the Department of Human Resources the sum of $X in recurring funds beginning in the 1999-2000 fiscal year for recurring costs of administering the requirements of this act.

Section 5. The changes to G.S. 105A-3(d) and G.S. 105A-16 made by this act are effective when this act becomes law. The changes to G.S. 105A-5 made by this act become effective January 1, 1999. Section 3 of this act becomes effective July 1, 1998. The remainder of this act becomes effective January 1, 2000, and applies to income tax refunds determined on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 39.
Finance Committee Substitute Adopted 4/9/97
Proposed Committee Substitute S39-PCSX1854

Short Title: Modify Setoff Debt Collection. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE SETOFF DEBT COLLECTION ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105A of the General Statutes reads as rewritten:

"Chapter 105A.

"Setoff Debt Collection Act.

~~"ARTICLE 1.~~

~~"In General.~~

"§ 105A-1. Purposes.

The purpose of this ~~Article~~ Chapter is to establish as policy that all claimant agencies and the Department of Revenue shall cooperate in identifying debtors who owe money to the State or to a local government through ~~its~~ their various ~~claimant~~ agencies and who qualify for refunds from the Department of Revenue. It is also the intent of this ~~Article~~ Chapter that procedures be established for setting off against any ~~such~~ refund the sum of any debt owed to the ~~State.~~ State or to a local government. Furthermore, it is the legislative intent that this ~~Article~~ Chapter be liberally construed so as to effectuate these purposes as far as legally and practically possible.

"§ 105A-2. Definitions.

The following definitions apply in this Chapter:

(1) Claimant agency. -- Either of the following:

a. A State agency.

b. A local agency acting through a clearinghouse or an organization pursuant to G.S. 105A-3(b1).

(2) Debt. -- Any of the following:

a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.

b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security Act.

c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5.

e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:

1. The Aid to Families with Dependent Children Program or the Aid to Families with Dependent Children -- Emergency Assistance Program, enabled by Chapter 108A, Article 2, Part 2.

2. The Work First Cash Assistance Program established pursuant to federal waivers received by the Department of Human Resources on February 5, 1996.

3. The State-County Special Assistance for Adults Program, enabled by Chapter 108A, Article 2, Part 3.

4. A successor program of one of these programs.

(3) Debtor. -- An individual who owes a debt.

(4) Department. -- The Department of Revenue.

(5) Reserved.

(6) Local agency. -- A county, to the extent it is not considered a State agency, or a municipality.

(7) Net proceeds collected. -- Gross proceeds collected through setoff against a debtor's refund minus the collection assistance fee retained by the Department.

(8) Refund. -- An individual's North Carolina income tax refund.

(9) State agency. -- Any of the following:

a. A unit of the executive, legislative, or judicial branch of State government.

b. A county, to the extent it administers a program supervised by the Department of Human Resources or it operates a

Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act.

~~As used in this Article:~~

~~(1) "Claimant agency" means and includes:~~

~~a. The State Education Assistance Authority as enabled by Article 23 of Chapter 116 of the General Statutes;~~

~~b. The North Carolina Department of Human Resources when in the exercise of its authority to collect health profession student loans made pursuant to G.S. 131-121;~~

~~c. The North Carolina Department of Human Resources when in the performance of its duties under the Medical Assistance Program enabled by Chapter 108A, Article 2, Part 6, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Medical Assistance Program collection functions;~~

~~d. The North Carolina Department of Human Resources when in the performance of its duties, under the Child Support Enforcement Program as enabled by Chapter 110, Article 9 and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support arrearages owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties;~~

~~e. The University of North Carolina, including its constituent institutions as specified by G.S. 116-2(4);~~

~~f. The University of North Carolina Hospitals at Chapel Hill in the conduct of its financial affairs and operations pursuant to G.S. 116-37;~~

~~g. The Board of Governors of the University of North Carolina and the State Board of Education through the College Scholarship Loan Committee when in the performance of its duties of administering the Scholarship Loan Fund for Prospective College Teachers enabled by Chapter 116, Article 5;~~

~~h. The Office of the North Carolina Attorney General on behalf of any State agency when the claim has been reduced to a judgment;~~

~~i. The State Board of Community Colleges through community colleges as enabled by Chapter 115D in the conduct of their financial affairs and operations;~~

~~j. State facilities as listed in G.S. 122C-181(a), School for the Deaf at Morganton, North Carolina Sanatorium at McCain, Western Carolina Sanatorium at Black Mountain, Eastern North Carolina Sanatorium at Wilson, and Gravely Sanatorium at Chapel Hill under Chapter 143, Article 7; Governor Morehead School under Chapter 115, Article 40; Central North Carolina School for the Deaf under Chapter 115, Article 41; Wright School for Treatment and Education of Emotionally Disturbed Children under Chapter 122C; and these same institutions by any other names by which they may be known in the future;~~

~~k. The North Carolina Department of Revenue;~~

~~l. The Administrative Office of the Courts;~~

~~m. The Division of Forest Resources of the Department of Environment, Health, and Natural Resources;~~

~~n. The Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan, established in Article 3 of General Statutes Chapter 135;~~

~~o. The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the Scholarship Loan Fund for Prospective Teachers enabled by Chapter 115C, Article 32A and the scholarship loan and grant programs enabled by Chapter 115C, Article 24C, Part 1;~~

~~p. The Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Governmental Employees' Retirement System in the performance of their duties pursuant to Chapters 120, 128, 135 and 143 of the General Statutes;~~

~~q. The North Carolina Teaching Fellows Commission in the performance of its duties pursuant to Chapter 115C, Article 24C, Part 2;~~

~~r. The North Carolina Department of Human Resources when in the performance of its collection duties for intentional program violations and violations due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Food Stamp Program collection functions.~~

~~The North Carolina Department of Human Resources when, in the performance of its duties under the Aid to Families with Dependent Children Program or the Aid to Families with Dependent Children -- Emergency Assistance Program~~

~~provided in Part 2 of Article 2 of Chapter 108A or the Work First Cash Assistance Program established pursuant to the federal waivers received by the Department on February 5, 1996, or under the State-County Special Assistance for Adults Program provided in Part 3 of Article 2 of Chapter 108A, it seeks to collect public assistance payments obtained through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error;~~

~~s. The Employment Security Commission of North Carolina.~~

~~t. Any State agency in the collection of salary overpayments from former employees.~~

~~u. The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the program under which the State encourages participation in the National Board for Professional Teaching Standards (NBPTS) Program, enabled by Section 19.28 of Chapter 769 of the 1993 Session Laws.~~

~~(2) "Debtor" means any individual owing money to or having a delinquent account with any claimant agency which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.~~

~~(3) "Debt" means any liquidated sum due and owing any claimant agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum.~~

~~(4) "Department" means the North Carolina Department of Revenue.~~

~~(5) "Refund" means any individual's North Carolina income tax refund.~~

~~(6) "Net proceeds collected" means gross proceeds collected through final setoff against a debtor's refund minus any collection assistance fee charged by the Department.~~

"§ 105A-3. Remedy additional; mandatory State usage; optional local usage; obtaining identifying ~~information.~~ information; registration.

(a) Remedy Additional. -- The collection remedy under this ~~Article~~ Chapter is in addition to and not in substitution for any other remedy available by law.

(b) Mandatory State Usage. -- ~~All claimant agencies shall submit, for collection under the procedure established by this Article, all debts which they are owed, except debts that they are advised by~~ A State agency must submit a debt owed to it for collection under this Chapter unless the State Controller has waived this requirement or the Attorney General has advised the State agency not to submit the debt because the validity of the debt is legitimately in dispute, because an alternative means of collection is pending and believed to be adequate, or because such a collection attempt would result in a loss of federal funds. The State Controller may

waive the requirement for a State agency, other than the Department of Human Resources or a county acting on behalf of that Department, to submit a debt owed to it for collection under this Chapter if the State Controller finds that collection by this means would not be practical or cost effective. A waiver may apply to all debts owed a State agency or a type of debt owed a State agency.

(b1) Optional Local Usage. -- A local agency may submit a debt owed to it for collection under this Chapter. A local agency that decides to submit a debt owed to it for collection under this Chapter must establish the debt by following the procedure set in G.S. 105A-5 and must submit the debt through one of the following:

(1) A clearinghouse that is established pursuant to an interlocal agreement adopted under Article 20 of Chapter 160A of the General Statutes and has agreed to submit debts on behalf of any requesting local agency.

(2) The North Carolina League of Municipalities.

(3) The North Carolina Association of County Commissioners.

(c) Identifying Information. -- All claimant agencies shall whenever possible obtain the full name, social security number, address, and any other identifying information required by ~~rules promulgated by~~ the Department ~~pursuant to G.S. 105A-16~~ from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor under this ~~Article.~~ Chapter.

(d) Registration and Reports. -- A ~~claimant~~ State agency must register with the Department and with the State Controller. Every State agency must report annually to the ~~Department~~ State Controller the amount of debts owed to the agency for which the agency did not submit a claim for setoff and the reason for not submitting the claim.

A clearinghouse or an organization that submits debts on behalf of a local agency must register with the Department. Once a clearinghouse registers with the Department under this subsection, no other clearinghouse may register to submit debts for collection under this Chapter.

"§ 105A-4. Minimum ~~sum collectible.~~ debt and refund.

~~A claimant agency shall not be allowed to effect final setoff and collect debts through use of the remedy established under this Article unless both the debt and the refund, if any, are~~ This Chapter applies only to a debt that is at least fifty dollars ~~($50.00).~~ ($50.00) and to a refund that is at least this same amount.

"§ 105A-5. Local agency notice, hearing, and decision.

(a) Prerequisite. -- A local agency may not submit a debt for collection under this Chapter until it has given the notice required by this section and the claim has been finally determined as provided in this section.

(b) Notice. -- A local agency must send written notice to a debtor that the agency intends to submit the debt owed by the debtor for collection by setoff. The notice must explain the basis for the agency's claim to the debt and that the agency intends to apply the debtor's refund against the debt. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing

with the local agency, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt.

(c) Administrative Review. -- A debtor who decides to contest a proposed setoff must file a written request for a hearing with the local agency within 30 days after the date the local agency mails a notice of the proposed action to the debtor. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. The governing body of the local agency or a person designated by the governing body must hold the hearing.

If the debtor disagrees with the decision of the governing body or the person designated by the governing body, the debtor may file a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The petition must be filed within 30 days after the debtor receives a copy of the local decision. Notwithstanding the provisions of G.S. 150B-2, a local agency is considered an agency for purposes of contested cases and appeals under this Chapter.

In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(d) Decision. -- A decision made after a hearing under this section must determine whether a debt is owed to the local agency and the amount of the debt.

(e) Return of Amount Set Off. -- If a local agency submits a debt for collection under this Chapter without sending the notice required by subsection (b) of this section, the agency must send the taxpayer the entire amount set off plus the collection assistance fee retained by the Department. Similarly, if a local agency submits a debt for collection under this Chapter after sending the required notice but before final determination of the debt and a decision finds that the local agency is not entitled to any part of the amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance fee retained by the Department. That portion of the amount returned that reflects the collection assistance fee must be paid from the local agency's funds.

If a local agency submits a debt for collection under this Chapter after sending the required notice and the net proceeds collected that are credited to the local agency for the debt exceed the amount of the debt, the local agency must send the balance to the debtor. No part of the collection assistance fee retained by the Department may be returned when a notice was sent and a debt is owed but the debt is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-266. A local agency that returns a refund to a taxpayer under this subsection must pay from the local agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer.

~~**Collection of sums due claimant agencies through setoff.**~~

~~Subject to the limitations contained in this Article, the Department of Revenue shall upon request render assistance in the collection of any delinquent account or debt owing to any claimant agency. This assistance shall be provided by setting off~~

~~any refunds due the debtor from the Department by the sum certified by claimant agency as due and owing.~~

"§ 105A-6. Procedure ~~for~~ Department to follow in making setoff.

(a) Notice to Department. -- A claimant agency seeking to attempt collection of a debt through setoff ~~shall~~ must notify the Department in writing and supply ~~(i)~~ information necessary to identify the debtor whose refund is sought to be set ~~off and (ii)~~ off. The claimant agency may include with the notification the date, if any, that the debt is expected to expire. ~~Notification to the Department and the furnishing of identifying information must occur on or before a date specified by the Department in the first year preceding the calendar year during which the refund would be paid. The notice is effective to initiate setoff against refunds that would be made in calendar years following the year in which the notice was first made until the date specified in the notice that the debt is expected to expire.~~ The agency ~~shall~~ must notify the Department in writing when a debt has been paid or is no longer owed the agency.

(b) Setoff by Department. -- The Department, upon receipt of notification, ~~shall~~ must determine each year whether the debtor to the claimant agency is entitled to a refund of at least fifty dollars ($50.00) from the Department. Upon determination by the Department that a debtor specified by a claimant agency qualifies for such a refund, the Department ~~shall notify in writing the claimant agency that a refund is pending, specify its sum, and indicate the debtor's address as listed on the tax return.~~

~~(c) Unless stayed by court order, the Department shall, upon certification as provided in this Article,~~ must set off the ~~certified~~ debt against the refund to which the debtor would otherwise be ~~entitled.~~ entitled and must refund any remaining balance to the debtor. The Department must mail the debtor written notice that the setoff has occurred and must credit the net proceeds collected to the claimant agency. If the claimant agency is a State agency, that agency must credit the amount received to a nonreverting trust account and must follow the procedure set in G.S. 105A-8.

~~"§ 105A-7. Notification of intention to set off and right to hearing.~~

~~(a) The claimant agency, upon receipt of notification from the Department that a debtor is entitled to a refund, shall within 10 days send a written notification to the debtor and a copy of same to the Department of its assertion of rights to the refund or any part thereof. Such notification shall inform the debtor of the claimant agency's intention to direct the Department to apply the refund or any portion thereof against the debt certified as due and owing. For the Department to be obligated to continue holding refunds until receipt of certification of the debt, if any, pursuant to G.S. 105A-10, the copy of the notification to the debtor by the claimant agency of its intention to set off must be received by the Department within 15 days of the date of the Department's mailing to the respective claimant agency the notification of the debtor's entitlement to a refund.~~

~~(b) The contents of the written notification to the debtor (and the Department's copy) of the setoff claim shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt to the claimant agency, the debtor's opportunity to give written notice of intent to contest the validity of the claim within~~

~~30 days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the 30-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.~~

~~(c) The written application by the debtor for a hearing shall be effective upon mailing the application postage prepaid and properly addressed to the claimant agency.~~

"§ 105A-8. ~~Hearing procedure.~~ State agency notice, hearing, decision, and refund of setoff.

(a) Notice. -- Within 10 days after a State agency receives a refund of a debtor, the agency must send the debtor written notice that the agency has received the debtor's refund. The notice must explain the debt that is the basis for the agency's claim to the debtor's refund and that the agency intends to apply the refund against the debt. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt. A State agency that does not send a debtor a notice within the time required by this subsection must refund the amount set off plus the collection assistance fee, in accordance with subsection (e) of this section.

(b) Hearing. -- A hearing on a contested claim of a State agency, except a constituent institution of The University of North Carolina or the Employment Security Commission, must be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The University of North Carolina must be conducted in accordance with administrative procedures approved by the Attorney General. A hearing on a contested claim of the Employment Security Commission must be conducted in accordance with rules adopted by that Commission. A request for a hearing on a contested claim of any State agency must be filed within 30 days after the State agency mails the debtor notice of the proposed setoff. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(c) Decision. -- A decision made after a hearing under this section must determine whether a debt is owed to the State agency and the amount of the debt.

(d) Return of Amount Set Off. -- If a State agency fails to send the notice required by subsection (a) of this section within the required time or a decision finds that a State agency is not entitled to any part of an amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance fee retained by the Department. That portion of the amount returned that reflects the collection assistance fee must be paid from the State agency's funds.

If a debtor owes a debt to a State agency and the net proceeds credited to the State agency for the debt exceed the amount of the debt, the State agency must send the balance to the debtor. No part of the collection assistance fee retained by the

Department may be returned when a debt is owed but it is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-266. A State agency that returns a refund to a taxpayer under this subsection must pay from the State agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer.

~~(a) A hearing on a contested claim, other than a claim of a constituent institution of The University of North Carolina, or a claim of the Employment Security Commission of North Carolina, shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a contested claim of a constituent institution of The University of North Carolina shall be conducted in accordance with administrative procedures approved by the Attorney General. A hearing on a contested claim of the Employment Security Commission of North Carolina shall be conducted in accordance with regulations adopted by the Employment Security Commission of North Carolina. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct, and if not, an adjustment to the claim shall be made.~~

~~(b) Pending final determination at hearing of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection through the setoff procedure allowed under this Article.~~

~~(c) No issues may be considered at the hearing which have been previously litigated.~~

"§ 105A-9. Appeals from hearings.

Appeals from ~~action taken at~~ hearings allowed under this ~~Article~~ Chapter, other than those conducted by the Employment Security Commission, shall be in accordance with the provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, except that the place of initial judicial review shall be the superior court for the county in which the debtor resides. Appeals from ~~actions~~ hearings allowed under this ~~Article~~ Chapter that are conducted by the Employment Security Commission of North Carolina shall be in accordance with the provisions of Chapter 96 of the General Statutes.

~~**"§ 105A-10. Certification of debt by claimant agency; finalization of setoff.**~~

~~(a) Upon final determination through hearing provided by G.S. 105A-8 of the debt due and owing the claimant agency or upon the debtor's default for failure to comply with G.S. 105A-7 mandating timely request for review of the asserted basis for setoff, the claimant agency shall within 20 days certify the debt to the Department and in default thereof, the Department shall no longer be obligated to hold the refund for setoff.~~

~~(b) Upon receipt by the Department of a certified debt from the claimant agency, the Department shall finalize the setoff by transferring the net proceeds collected for credit or payment in accordance with the provisions of G.S. 105A-14 and by refunding any remaining balance to the debtor as if setoff had not occurred.~~

~~**"§ 105A-11. Notice of final setoff.**~~

~~Upon the finalization of setoff under the provisions of this Article, the Department shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when disbursed.~~

"§ 105A-12. Priorities in claims to setoff.

~~Priority in multiple claims to refunds allowed to be set off under the provisions of this Article shall be in the order in time which a claimant agency has filed a written notice with the Department of its intention to effect collection through setoff under this Article. Notwithstanding the priority set forth above according to time of filing, the~~ The Department has priority over all other claimant agencies for collection by setoff whenever it is a competing agency for a refund. State agencies have priority over local agencies for collection by setoff. When there are multiple claims by State agencies other than the Department, the claims have priority based on the date each agency registered with the Department under G.S. 105A-3. When there are multiple claims by two or more organizations submitting debts on behalf of local agencies, the claims have priority based on the date each organization registered with the Department under G.S. 105A-3. When there are multiple claims among local agencies whose debts are submitted by the same organization, the claims have priority based on the date each local agency requested the organization to submit debts on its behalf.

"§ 105A-13. ~~Disposition of proceeds collected; collection~~ Collection assistance fees.

~~(a) Upon effecting final setoffs, the Department shall periodically write checks to the respective claimant agencies for the net proceeds collected on their behalf.~~

~~(b) Each year the Department shall determine its actual cost of collection under the Setoff Debt Collection Act for the immediately preceding year and shall calculate the percentage that cost represents of the preceding year's collections, excluding collections of child support arrearages under G.S. 105A-2(1)d. The Department shall retain that percentage from the gross proceeds collected by the Department through setoff for the current year, other than the gross proceeds collected of child support arrearages under G.S. 105A-2(1)d.~~ To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of no more than fifteen dollars ($15.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The Department must set the amount of the collection assistance fee based on its actual cost of collection under this Chapter for the immediately preceding year. If the Department is able to collect only part of a debt through setoff, the collection assistance fee has priority over the remainder of the debt. The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

"§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.

(a) Simultaneously with the transmittal of ~~a check for~~ the net proceeds collected to a claimant agency, the Department ~~shall~~ must provide the agency with an

accounting of the setoffs ~~finalized~~ for which payment is being made. The accounting ~~shall,~~ must whenever possible, include the full names of the debtors, the debtors' social security numbers, the gross proceeds collected per ~~individual~~ setoff, the net proceeds collected per setoff, and the collection assistance fee added to the debt and collected ~~charged~~ per setoff.

(b) Upon receipt by a claimant agency of ~~a check representing~~ net proceeds collected on ~~a~~ the claimant agency's behalf by the ~~Department~~ Department, a final determination of the claim if it is a State agency claim, and an accounting of the proceeds as specified under this section, the claimant agency ~~shall~~ must credit the debtor's obligation with the ~~gross~~ net proceeds collected.

"§ 105A-15. Confidentiality exemption; nondisclosure.

(a) Notwithstanding G.S. 105-259 or any other provision of law prohibiting disclosure by the Department of the contents of taxpayer records or information and notwithstanding any confidentiality statute of any claimant agency, ~~all~~ the exchange of any information ~~exchanged~~ among the Department, the claimant agency, the organization submitting debts on behalf of a local agency, and the debtor necessary to ~~accomplish and effectuate the intent of this Article~~ implement this Chapter is lawful.

(b) The information ~~obtained by~~ a claimant agency or an organization submitting debts on behalf of a local agency obtains from the Department in accordance with the exemption allowed by subsection (a) ~~shall only~~ may be used by ~~a claimant~~ the agency or organization only in the pursuit of its debt collection duties and ~~practices and any person employed by, or formerly employed by, a claimant agency who discloses any such information for any other purpose, except as otherwise allowed by G.S. 105-259, shall be penalized in accordance with the terms of that statute.~~ practices and may not be disclosed except as provided in G.S. 105-259, 153A-148.1, or 160A-208.1.

"§ 105A-16. ~~Rules and regulations.~~ Rules.

The Secretary of Revenue ~~is authorized to prescribe forms and make all rules which he deems necessary in order to effectuate the intent of this Article.~~ may adopt rules to implement this Chapter. The State Controller may adopt rules to implement this Chapter."

Section 2. G.S. 105-266(b) reads as rewritten:

"(b) Interest. -- An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i) from the date that interest begins to accrue until a refund is paid. A refund sent to a taxpayer is considered paid on a date determined by the Secretary that is no sooner than five days after a refund check is mailed.

A refund set off against a debt pursuant to Chapter 105A of the General Statutes is considered paid five days after the Department mails the taxpayer a notice of the setoff, unless G.S. 105A-5 or G.S. 105A-8 requires the agency that requested the setoff to return the refund to the taxpayer. In this circumstance, the refund that was set off is not considered paid until five days after the agency that requested the refund mails the taxpayer a check for the refund.

Interest on an overpayment of a tax, other than a tax levied under Article 4 or Article 8B of this Chapter, accrues from a date 90 days after the date the tax was originally paid by the taxpayer until the refund is paid. Interest on an overpayment of

a tax levied under Article 4 or Article 8B of this Chapter accrues from a date 45 days after the latest of the following dates until the refund is paid:

(1) The date the final return was filed.

(2) The date the final return was due to be filed.

(3) The date of the overpayment.

The date of an overpayment of a tax levied under Article 4 or Article 8B of this Chapter is determined in accordance with section 6611(d), (f), (g), and (h) of the Code."

Section 3. The State Controller is directed to study whether it is desirable and feasible for the State to establish a central clearinghouse for compiling debt set-off information required by the Department of Revenue to comply with Chapter 105A of the General Statutes. In conducting the study, the State Controller shall consider which State agency is the most appropriate agency to serve as a clearinghouse and the costs and benefits of developing a clearinghouse, including the extent to which separate agencies must establish duplicative functions in the absence of a central clearinghouse.

The State Controller shall report the findings of this study to the Revenue Laws Study Committee by February 16, 1998. The Revenue Laws Study Committee shall report any recommendations on this issue to the 1998 Regular Session of the General Assembly.

Section 4. Section 3 of this act and the changes to G.S. 105A-3(d) and G.S. 105A-16 made by this act are effective when this act becomes law. The changes to G.S. 105A-5 made by this act become effective January 1, 1999. The remainder of this act becomes effective January 1, 2000, and applies to income tax refunds determined on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: Senate Bill 39 (Proposed Senate Committee Substitute)
SHORT TITLE: Modify Setoff Debt Collection

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

REVENUES **(See "Assumptions and Methodology")**

EXPENDITURES (See "Assumptions and Methodology")

POSITIONS:

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The program is administered by the Department of Revenue.

EFFECTIVE DATE: The major changes under the bill apply to tax refunds determined on or after January 1, 2000.

BILL SUMMARY: The 1979 General Assembly approved legislation to allow selected State agencies to request the Department of Revenue to offset income tax refunds (if refund at least $50) as a means of collecting debts owed agencies by taxpayers (in addition to other remedies). The Department of Revenue's cost of collecting the debt is earmarked from refunds offset, with the earmarking based on the prior year's experience.

The program has been modified over the years as other agencies have asked to be included. The bill modifies the program as follows:

(1) Authorizes local government agencies to submit debts for setoff, but only through a local government clearinghouse for all units participating and only after the local government provides the debtor with notice and rights to a hearing and appeal.

(2) Streamlines the program by eliminating unnecessary notices between the Department of Revenue and the claimant agencies and by allowing the Department to place refunds of debtors in escrow while the State agency finalizes the debt setoff.

(over)

(3) Requires State agencies not currently allowed to use the program to submit debts for setoff unless the State Controller waives the requirement.

(4) Provides that the Department of Revenue's costs of administering the program be charged to the debtor instead of the state agency, limits collection assistance fee to $15 per debt collected, and shifts the cost of collecting child support debts from all State agencies to an earmarking of state income tax collections.

(5) Sets up a procedure for a state or local agency to mail a refund to a taxpayer in cases where the actual debt is less than the setoff amount or where the agency does not comply with the taxpayer notification requirements of the bill. In addition, if a taxpayer protests the setoff and the decision finds that the agency is not entitled to the setoff, the agency must send the taxpayer the full setoff amount plus the collection assistance fee. The return of the collection assistance fee is financed from the agency's budget. When the setoff amount exceeds the actual debt, the agency must refund the excess but is not required to refund the collection assistance fee. The payment of interest applies to refunds sent out by agencies.

(6) Directs the State Controller to study the merits of establishing a central clearinghouse for compiling debt setoff information required by the Department of Revenue. The Controller shall report the findings to the Revenue Laws Study Committee by February 16, 1998.

ASSUMPTIONS AND METHODOLOGY:

(1) Authorizing local government units to participate in the program will increase revenue for the cities and counties that participate. There is no data available at this time to calculate the gains. However, if the change allowed local units to collect 1/3 of their delinquent property tax bills, the additional receipts would be over $37 million.

This provision will substantially increase the number of claims processed by the Department of Revenue. However, the proposal to shift more of the administrative burden to claimant agencies and the use of a clearinghouse to submit claims for local units should help offset the additional workload. In addition, the new claims will be eligible for collection assistance fees.

(2) Requiring State agencies currently not eligible for the program to participate will increase agency receipts by a maximum of $1 million per year. In theory, the additional receipts should reduce General Fund budget requirements for the recipient agencies. At this time, the State Controller estimates that as much as 90% of the potential claim volume in State government is covered by the program.

(3) Requiring the Department of Revenue's costs to be paid by the debtor instead of being earmarked out of the refunds offset would increase agency receipts by a maximum of $300,000 per year based on the 1996 experience. This would reduce General Fund budget requirements. In cases where the tax refund is greater than the debt, more of the taxpayer's refund will be

offset. If the debt is greater than the refund, the collection cost will be added to the debt amount to be carried over to the following year.

(4) The shift in the funding of child support collection costs to a General Fund earmarking from an earmarking of refunds offset will change how the General Fund pays for the costs, but there will be no change in overall budget requirements.

(5) Limiting the collection assistance fee to $15 will not have a fiscal effect since the average fee now is far less than $15.

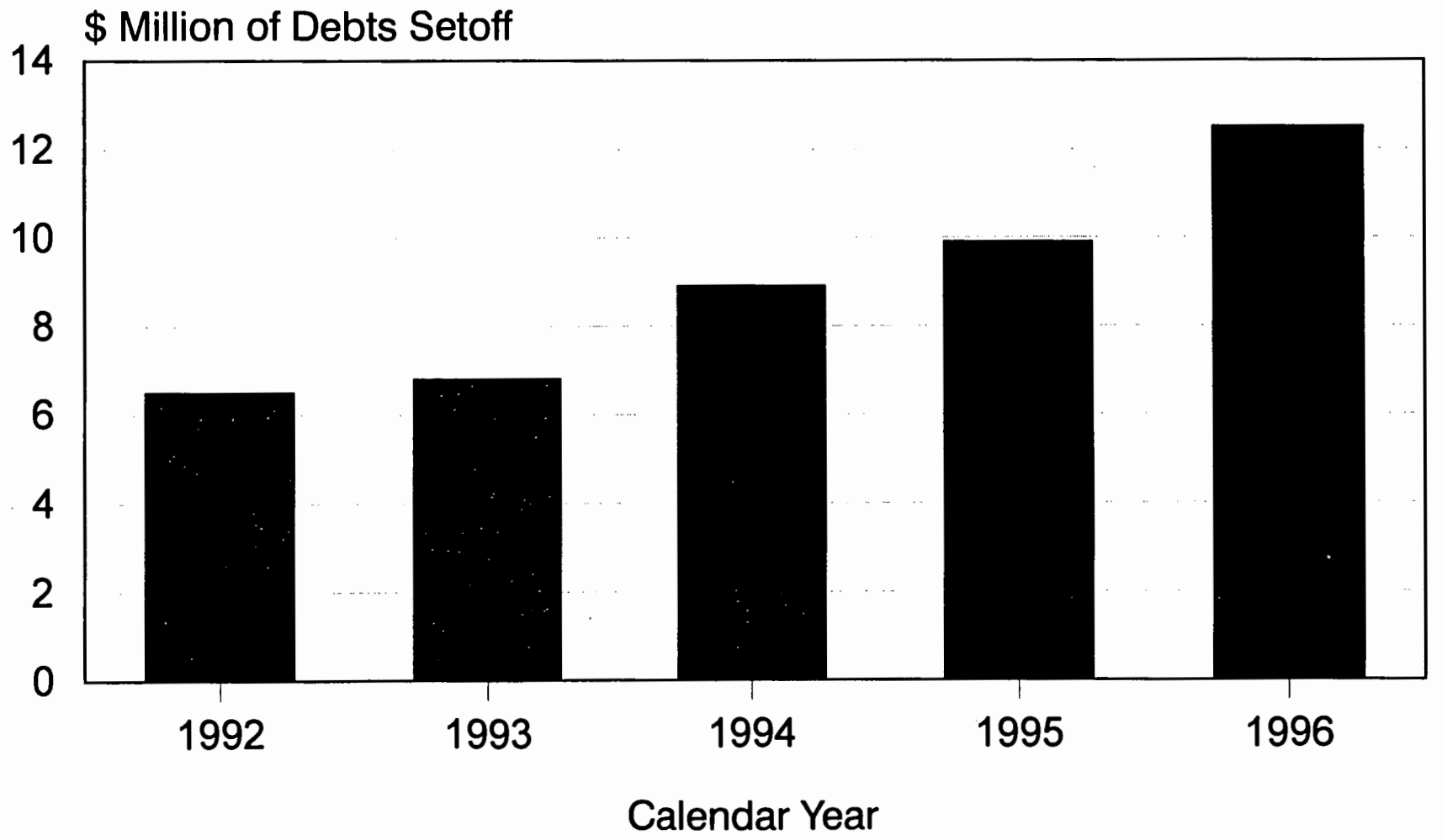
(6) Shifting the administrative burden on state agency debts will increase the workload and costs of state agencies. The Department of Human Resources is developing data on the impact of their operations.

For information purposes, the graph on the back of this page shows the recent yield from the setoff program.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: July 29, 1997

(Over)

SETOFF DEBT COLLECTION ACT RESULTS



EXPLANATION OF SENATE BILL 39

Proposed Committee Substitute PCSX1854

Modify Setoff Debt Collection

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 29, 1997
SPONSOR: Senator Larry Shaw

Senate Bill 39 is one of the bills recommended to the 1997 General Assembly by the Revenue Laws Study Committee. It modifies the Setoff Debt Collection Act, Chapter 105A of the General Statutes. Under that act, the Department of Revenue sends the income tax refund of an individual who owes money to a State agency to that agency in payment of the debt rather than to the individual. The individual's income tax refund is therefore set off against the debt the individual owes the State agency .

In April, the Senate Finance Committee adopted a committee substitute that contained an appropriation to the Department of Human Resources; the bill was re-referred to Appropriations. This proposed committee substitute represents a compromise between the Department of Revenue, local governments, and the other affected State agencies. It removes the appropriation to the Department of Human Resources, requires the State Controller to study setting up a State clearinghouse for compiling State debt setoff information, and removes a proposed change in agency priorities for debt setoff.

Senate Bill 39 expands and streamlines the setoff program as follows:

1. It requires all State agencies not given a waiver by the State Controller to use the setoff program to collect debts owed the agency. Under current law, the State agencies that are included in a list in the statute must use the setoff program to collect debts and those that are not listed cannot use the setoff program.
2. It extends the setoff program to local units of government and their agencies and establishes the procedures local units and their agencies must follow to use the setoff program. The bill allows, but does not require, local entities to use the setoff program.
3. It streamlines the setoff program by eliminating several unnecessary notices between the Department of Revenue and the claimant agencies. It accomplishes this by allowing the Department to place refunds of debtors of State agencies in escrow while the State agency finalizes the setoff.
4. It shifts the cost of the program from the agencies whose debts are collected to the debtors who owe the debts, sets a $15.00 cap on the fee imposed for collection through setoff, and shifts the cost of collecting

child support debts from all the State agencies that use the setoff program to an earmarking of income tax collections.

5. It clarifies and reorganizes some of the provisions in the Setoff Debt Collection Act.

Expansion to All State Agencies

The Setoff Debt Collection Act currently requires certain named State agencies to participate. Other State agencies may not participate, even on a voluntary basis. The bill would extend the mandatory State program to all State agencies, as recommended by the State Controller's Office, which administers the Statewide accounts receivable program pursuant to G.S. 147-86.22. If a State agency's use of the program would not be practical or cost effective in certain cases, the State Controller could waive the requirement.

Expansion to Local Governments

The idea to expand the setoff program to local entities originated with Senate Bill 761 of the 1995 Session, introduced by Senator Conder. Senate Bill 39 authorizes local governments to submit their debts for collection by setoff only after providing the debtor with notice, an opportunity to be heard before the local government, and an appeal process pursuant to the Administrative Procedure Act. After completing this process, the agency can submit the debt through the League of Municipalities, the Association of County Commissioners, or another clearinghouse. Funneling the debts through a clearinghouse rather than having each local government submit its own debts will avoid placing an undue administrative burden on the Department of Revenue.

Streamlining of Program

Under current law, the setoff process requires three notices to the Department by the claimant agency, two notices by the Department to the agency, and two notices to the taxpayer. The bill eliminates two of the notices to the Department by claimant agencies and one of the notices by the Department to claimant agencies.

Currently, a State agency notifies the Department of a debt. The Department checks to see if the debtor will be receiving a tax refund. If so, the Department notifies the agency that the debtor is entitled to a refund. The agency then sends the Department and the debtor a notice of intent to apply the refund to the debt. After any hearing requested by the debtor, the agency sends the Department a notice of certification of the debt. The Department then applies the tax refund to the debt and notifies the taxpayer and the agency of the setoff. If the debt is less than the refund, the Department sends the balance of the refund at the same time.

Under the bill, a claimant agency sends the Department notice of the debt and the Department immediately sets off the debt against the refund and notifies the taxpayer and the claimant agency. A local agency cannot notify the Department of a debt until after the debt has been established through notice to the debtor and a hearing, if requested. A State agency can notify the Department of a debt, have the

refund placed in an escrow for the agency, notify the debtor and hold any hearing requested, and then disburse the escrowed amount accordingly.

The bill gives a debtor the same procedural and substantive rights as under current law, including the right to interest on any part of the refund found not to be a valid debt. Under current law, a debtor is notified of a potential setoff and the right to contest the setoff. The debtor receives the same notifications under the bill. Also, under the bill, if an agency fails to give the debtor the required notice, the agency must return all the refund even though a debt is owed.

Collection Assistance Fee Changes

The cost of administering the setoff debt collection program is paid by the State agencies whose debts are collected by setoff. Each year, the Department of Revenue determines its costs of running the program and recovers these costs by charging a collection assistance fee as a percentage of each debt collected. The bill caps this fee at no more than $15.00 per debt. The actual fee is expected to be less.

The bill shifts the burden of paying the administrative costs of most setoffs from participating State agencies to the debtors. Under current law, except in the case of child support debts, the Department of Revenue retains the collection assistance fee from each setoff. The retention of the fee reduces the amount paid to the agency. The agency therefore absorbs the cost of collecting the debt by receiving less than the full amount of the debt. Under the bill, the Department of Revenue will still retain the collection assistance fee but the fee will be added to the debt and paid by the debtor from the refund rather than subtracted from the amount payable to the agency. As a result, the debtor will pay the fee out of the tax refund that was set off. This change will shift approximately $270,000, which is the cost of collecting about 39,000 debts, from State agencies' budgets to debtors.

Under current law, the Department of Human Resources and their county counterparts use the debt setoff program to collect child support arrearages pursuant to the federal Child Support Enforcement Program. Since January 1, 1996, rather than deducting its administrative costs from amounts collected for child support arrearages, the Department of Revenue has been required to spread among other State agencies the portion of the Department's administrative costs attributable to child support collections. That change shifted child support setoff administrative costs from child support collections to other setoff collections, resulting in an increase in the percentage deducted from those other collections. The bill directs the administrative costs of collecting child support arrearages to be drawn from income tax collections rather than deducted from the amounts collected on behalf of other State agencies. The General Fund bears the cost in either case, but under the bill the cost will not come from amounts appropriated to State agencies for other purposes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 841
Proposed Committee Substitute S841-PCSX7847

Short Title: Modify Corporate Dividend Taxation. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOREIGN CORPORATIONS TO DEDUCT EXPENSES RELATED TO DEDUCTIBLE SUBSIDIARY DIVIDENDS TO THE SAME EXTENT AS NORTH CAROLINA CORPORATIONS AND TO CLARIFY THE TREATMENT OF DIVIDENDS AS BUSINESS OR NONBUSINESS INCOME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.7(4) reads as rewritten:

"(4) A corporation ~~that, at the close of its taxable year, has its commercial domicile within North Carolina shall be allowed to~~ may deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock."

Section 2. G.S. 105-130.4(a)(1) reads as rewritten:

"(1) 'Business income' means income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, ~~and/or~~ or disposition of the property ~~constitute integral parts~~ constitutes an integral part of the corporation's regular trade or business operations. Dividend income, like other income from intangible property, is business income if it meets the requirements of this definition."

Section 3. This act is effective for taxable years beginning on or after January 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 6

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/23/97

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to: Finance.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT, ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH CAROLINA.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,
The General Assembly of North Carolina enacts:

PART I. SHORT TITLE; PERFORMANCE AUDIT

Section 1.1. This act shall be known as the "Fisheries Reform Act of 1997".

Section 1.2. The State Auditor shall conduct a performance audit, including a detailed operational review, of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources. The performance audit shall include an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of this act. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998. The Joint Legislative Commission on Seafood and Aquaculture shall review the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of this act should be implemented.

PART II. MARINE FISHERIES COMMISSION

Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part to read:

"Part 5B. Marine Fisheries Commission.

"**§ 143B-289.20. Definitions.**

(a) As used in this Part:

(1) 'Commission' means the Marine Fisheries Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Fisheries Director' means the Director of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply throughout this Part.

"**§ 143B-289.21. Marine Fisheries Commission -- creation; purposes.**

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment, Health, and Natural Resources.

(b) The functions, purposes, and duties of the Marine Fisheries Commission are to:

(1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources of the State.

(2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.

(3) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

"**§ 143B-289.22. Marine Fisheries Commission -- powers and duties.**

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources of the State including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.

b. Seasons for taking fish.

c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221(e).

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements and taxes prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(e) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(f) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

"**§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.**

(a) With respect to those matters within its jurisdiction, the Marine Fisheries Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Marine Fisheries Commission shall govern the following proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.

(2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources of the

State arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the marine and estuarine resources of the State, to the public health, or to private property resulting from the violation.

(2) The frequency and gravity of the violation.

(3) The cost of rectifying the damage.

(4) Whether the violation was committed willfully or intentionally.

(5) The prior record of the violator in complying or failing to comply with programs over which the Marine Fisheries Commission has regulatory authority.

(6) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment, Health, and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary may delegate his powers and duties under this section to the Fisheries Director.

"§ 143B-289.24. Marine Fisheries Commission -- members; appointment; term; oath; ethical standards; removal; compensation; staff.

(a) Members, Selection. -- The Marine Fisheries Commission shall consist of nine members appointed by the Governor as follows:

(1) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(2) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(3) One person actively connected with, and experienced as, a licensed fish dealer or in seafood processing or distribution as demonstrated by deriving at least fifty percent (50%) of annual earned income from activities involving the buying, selling, processing, or distribution of seafood landed in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(4) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(5) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(6) One person actively engaged in the sports fishing industry as demonstrated by deriving at least fifty percent (50%) of annual earned income from selling goods or services in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(7) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(8) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(9) One person who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or sports fishing industries, including the processing and distribution of seafood.

(b) Residential Qualifications. -- For purposes of providing regional representation on the Commission, the following three coastal regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of subsection (a) of this section shall be residents of one of the coastal regions of the State. The membership of the Commission shall include at least one person who is a resident of each of the three coastal regions of the State.

(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission.

(d) Terms. -- The term of office of members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (7), (8), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.

(e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

(f) Oath of Office. -- Each member of the Commission, before assuming the duties of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

(g) Ethical Standards. --

(1) Disclosure statements. -- Any person under consideration for appointment to the Commission shall provide both a financial disclosure statement and a potential bias disclosure statement to the Governor. A financial disclosure statement shall include statements of the nominee's financial interests in and related to State fishery resources use, licenses issued by the Division of

Marine Fisheries held by the nominee or any business in which the nominee has a financial interest, and uses made by the nominee or by any business in which the nominee has a financial interest of the regulated resources. A potential bias disclosure statement shall include a statement of the nominee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the management and use of the State's coastal fishery resources. Disclosure statements shall be treated as public records under Chapter 132 of the General Statutes and shall be updated on an annual basis.

(2) Voting/conflict of interest. -- A member of the Commission shall not vote on any issue before the Commission that would have a 'significant and predictable effect' on the member's financial interest. For purposes of this subdivision, 'significant and predictable effect' means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

(3) Regular attendance. -- It shall be the duty of each member of the Commission to regularly attend meetings of the Commission.

(h) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance.

(i) Office May Be Held Concurrently With Others. -- The office of member of the Marine Fisheries Commission may be held concurrently with any other elected or appointed office, as authorized by Article VI, Section 9, of the Constitution of North Carolina.

(j) Compensation. -- Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission

members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(k) Staff. -- All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department.

(l) Legal Services. -- The Attorney General shall: (i) act as attorney for the Commission; (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii) represent the Commission in any appeal or other review of any order of the Commission.

"§ 143B-289.25. Marine Fisheries Commission -- officers; organization; seal.

(a) The Governor shall appoint a member of the Commission to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve any number of consecutive terms.

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

(c) The Commission shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) The Commission may adopt a common seal and may alter it as necessary.

"§ 143B-289.26. Marine Fisheries Commission -- meetings; quorum.

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. At least three of the four quarterly meetings of the Commission shall be held in one of the coastal regions designated in G.S. 143B-289.24.

(b) Five members of the Commission shall constitute a quorum for the transaction of business.

"§ 143B-289.27. Marine Fisheries Commission Advisory Committees established; members; selection; duties.

(a) The Commission shall be assisted in the performance of its duties by four standing advisory committees and four regional advisory committees. Each standing and regional advisory committee shall consist of no more than 11 members. The Chair of the Commission shall designate one member of each advisory committee to serve as Chair of the committee. Members shall serve staggered three-year terms as determined by the Commission. The Commission shall establish other policies and procedures for standing and regional advisory committees that are consistent with those governing the Commission as set out in this Part.

(b) The Chair of the Commission shall appoint the following standing advisory committees:

(1) The Finfish Committee, which shall consider matters concerning finfish.

(2) The Crustacean Committee, which shall consider matters concerning shrimp and crabs.

(3) The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.

(4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

(c) Each standing advisory committee shall be composed of commercial and recreational fishermen, scientists, and other persons who have expertise in the matters to be considered by the advisory committee to which they are appointed. In making appointments to advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented and shall consider for appointment persons who are recommended by groups representing commercial fishing interests, recreational fishing interests, environmental protection and conservation interests, and other groups interested in coastal fisheries management.

(d) Each standing advisory committee shall review all matters referred to the committee by the Commission and shall make findings and recommendations on these matters. A standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The Commission, in the performance of its duties, shall consider all findings and recommendations submitted by standing advisory committees.

(e) The Chair of the Commission shall appoint a regional advisory committee for each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint a regional advisory committee for that part of the State that is not included in the three coastal regions. In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented.

"**§ 143B-289.28. Marine Fisheries Endowment Fund.**

(a) Recognizing the inestimable importance to the State and its people of conserving the marine and estuarine resources of the State, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its marine and estuarine resources, there is created the North Carolina Marine Fisheries Endowment Fund, the income and principal of which shall be used only for the purpose of supporting marine and estuarine resource conservation programs of the State in accordance with this section.

(b) There is created the Board of Trustees of the Marine Fisheries Endowment Fund of the Marine Fisheries Commission, with full authority over the administration of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and members shall be the Chair, Vice-Chair, and members of the Marine Fisheries Commission. The State Treasurer shall be the custodian of the Marine Fisheries

Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(c) The assets of the Marine Fisheries Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund.

(2) Any other sources specified by law.

(d) The Marine Fisheries Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Fund. In recognition of this special trust, the following limitations and restrictions are placed on expenditures from the Fund:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from the gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No expenditure or disbursement shall be made from the principal of the Marine Fisheries Endowment Fund except as otherwise provided by law.

(3) The income received and accruing from the investments of the Marine Fisheries Endowment Fund must be spent only to further the conservation of marine and estuarine resources.

(e) The Board of Trustees of the Marine Fisheries Endowment Fund may accumulate the investment income of the Fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget for the conservation and management of marine and estuarine resources. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the Fund for the purposes set out in subdivision (3) of subsection (d) above.

(f) Expenditure of the income derived from the Marine Fisheries Endowment Fund shall be made through the State budget accounts of the Marine Fisheries Commission in accordance with the provisions of the Executive Budget Act. The Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(g) The Marine Fisheries Endowment Fund and the income therefrom shall not take the place of State appropriations, but any portion of the income of the Marine Fisheries Endowment Fund available for the purpose set out in subdivision (3) of subsection (d) above shall be used to supplement other income of and appropriations for the conservation and management of marine and estuarine resources to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

"**§ 143B-289.29. Conservation Fund; Commission may accept gifts.**

(a) The Marine Fisheries Commission may accept gifts, donations, or contributions from any sources. These funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management.

These funds shall be administered by the Marine Fisheries Commission and shall be used for marine and estuarine resources management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Marine Fisheries Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources Conservation Fund that shall be made available to the Marine Fisheries Commission for conservation, protection, enhancement, preservation, and perpetuation of marine and estuarine species that may be endangered or threatened with extinction and for education about these issues. The special Conservation Fund is subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different sizes, shapes, types, or designs may be used to recognize contributions in different amounts, but no emblem shall be issued for a contribution amounting in value to less than five dollars ($5.00).

"**§ 143B-289.30. Article subject to Chapter 113.**

Nothing in this Article shall be construed to affect the jurisdictional division between the Marine Fisheries Commission and the Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter.

"**§ 143B-289.31. Jurisdictional questions.**

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment, Health, and Natural Resources and the Marine Fisheries Commission as to any duty, responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding."

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Section 3.1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.8. Coastal Habitat Protection Plans.**

(a) The Department shall coordinate the preparation of draft Coastal Habitat Protection Plans for critical fisheries habitats. The Department shall use the staff of those divisions within the Department that have jurisdiction over marine fisheries, water quality, and coastal area management in the preparation of the Coastal Habitat Protection Plans and shall request assistance from other federal and State agencies as necessary. The plans shall:

(1) Describe and classify biological systems in the habitats, including wetlands, fish spawning grounds, estuarine or aquatic endangered or threatened species, primary or secondary nursery areas, shellfish

beds, submerged aquatic vegetation (SAV) beds, and habitats in outstanding resource waters.

(2) Evaluate the function, value to coastal fisheries, status, and trends of the habitats.

(3) Identify existing and potential threats to the habitats and the impact on coastal fishing.

(4) Recommend actions to protect and restore the habitats.

(b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall each appoint two members of the commission he or she chairs to a six-member review committee. The six-member review committee, in consultation with the Department, shall review the draft Plan and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the six-member review committee, shall then be submitted to the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission, each of which shall independently consider the Plan for adoption. If any of the three commissions is unable to agree to any aspect of a Plan, the chair of each commission shall refer that aspect of the Plan to a six-member conference committee to facilitate the resolution of any differences. The six-member conference committee shall be appointed in the same manner as a six-member review committee and may include members of the six-member review committee that reviewed the Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions adopted by all three commissions. The three commissions shall review and revise each Coastal Habitat Protection Plan at least once every five years.

(c) In carrying out their powers and duties, the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall ensure, to the maximum extent practicable, that their actions are consistent with the Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and does not oblige any commission to modify any rule adopted, permit decision made, or other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan by the three commissions. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall adopt rules to implement Coastal Habitat Protection Plans in accordance with Chapter 150B of the General Statutes.

(d) If any of the three commissions concludes that another commission has taken an action that is inconsistent with a Coastal Habitat Protection Plan, that commission may request a written explanation of the action from the other commission. A commission shall provide a written explanation: (i) upon the written request of one of the other two commissions, or (ii) upon its own motion if the commission determines that it must take an action that is inconsistent with a Coastal Habitat Protection Plan.

(e) The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall report to the Joint

Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Coastal Habitat Protection Plans, including the extent to which the actions of the three commissions are consistent with the Plans, on or before 1 September of each year."

(f) The Secretary of Environment, Health, and Natural Resources shall report to the Environmental Review Commission within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission shall review each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted to the Environmental Review Commission. The Environmental Review Commission may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary."

Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-subdivision to read:

"v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

The Commission shall approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.4. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-182.1. Fishery Management Plans.**

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.22.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory Council shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fisheries Management Plan, once adopted, without the approval of the Secretary of Environment, Health, and Natural Resources.

(e) The Secretary of Environment, Health, and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. If the Secretary determines that the Division of Marine Fisheries has failed to develop or the Marine Fisheries Commission has failed to adopt a Fishery Management Plan in compliance with the Schedule, the Secretary may issue a proclamation prohibiting the taking of species to which the Plan would apply. The completion of any act within 30 days of the time specified by the Schedule constitutes compliance with the Schedule. A proclamation issued pursuant to this subsection is not subject to Article 2A of Chapter 150B of the General Statutes.

(f) The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted to the commission. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(g) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes."

Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to read:

"(12a) Optimal yield. -- The amount of fish that:

a. Will provide the greatest overall benefit to the State, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

b. Is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

c. In the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in the fishery.

(12b) Overfishing or overfished. -- A rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis."

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1. G.S. 113-187 reads as rewritten:

"**§ 113-187. Penalties for violations of Subchapter and rules.**

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a ~~Class 2~~ Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

(1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.

(2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to

shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.

(3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.

(4) Violating the provisions of a special permit or gear license issued by the Department.

(5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas."

Section 4.2. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**

(a) Any person who sells fish in violation of G.S. 113-168.4 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(b) Any person who purchases fish in violation of G.S. 113-169.3 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(c) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Secretary against any person who sells fish in violation of G.S. 113-168.4 or purchases fish in violation of G.S. 113-169.3.

(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(e) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-289.23(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to G.S. 143B-289.23(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (e) of

this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

Section 4.3. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. ~~Such~~ Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation."

Section 4.4. The Marine Fisheries Commission shall develop a Violation Points System applicable to the fishing licenses of all persons who violate marine fisheries statutes or rules. In developing this system, the Marine Fisheries Commission shall consider the recommendations made in the Final Report of the Moratorium Steering Committee and the suspension, revocation, and reissuance

procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop an implementation schedule for the Violation Points System. The Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 July 1999, on the development of the Violation Points System and the implementation schedule.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 5.1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 14A.

"Coastal and Estuarine Commercial Fishing Licenses.

"§ 113-168. Definitions.

As used in this Article:

(1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation includes taking people fishing for hire.

(2) 'Commission' means the Marine Fisheries Commission.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment, Health, and Natural Resources.

(4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) 'North Carolina resident' means a person is a resident within the meaning of G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.

(6) 'RCGL' means Recreational Commercial Gear License.

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

(8) 'SCFL' means Standard Commercial Fishing License.

"§ 113-168.1. General provisions for commercial licenses and endorsements.

(a) Duration, Fees. -- All licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license shall pay the full annual license fee at the time the applicant applies for the license regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without being licensed as required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready

at hand for inspection all currently valid licenses and endorsements required under this Article. To comply with this subsection, a person must have either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) an assignment of a SCFL authorized under this Article. A licensee or assignee shall not refuse to exhibit the licenses and endorsements upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, address, and date of birth of the licensee; the date on which the license is issued; the date on which the license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

"**§ 113-168.2. Standard Commercial Fishing License.**

(a) Requirement. -- No person shall engage in a commercial fishing operation in the coastal fishing waters without holding a Standard Commercial Fishing License issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL or RSCFL is not required to hold a SCFL or RSCFL.

(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.

(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten-dollar ($10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.

(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license

fees shall not be refunded and shall be applied to the costs of processing the application.

(e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of North Carolina shall be two thousand dollars ($2,000) or the amount charged to a North Carolina resident in the nonresident's state, whichever is lesser.

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed. The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the assignee's name and mailing address, and the duration of the assignment. A notarized copy of the assignment shall be filed with the Division. The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel. The assignment may be revoked by: (i) written notification by the assignor that the assignment has been terminated; or (ii) a determination by the Division that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(g) Transfer. -- A SCFL may be transferred:

(1) By the license holder to a member of the license holder's immediate family.

(2) By the State to the estate of the license holder upon the death of the license holder.

(3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.

(4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.

(5) Under any other circumstance authorized by rule of the Commission.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the SCFL, RSCFL, or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to

the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction.

"§ 113-168.3. Retired Standard Commercial Fishing License.

(a) SCFL Provisions Applicable. -- Except as provided in this section, the provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fee. -- Any person who is 65 years of age or older and who is otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an annual fee of one hundred dollars ($100.00). Proof of age shall be supplied at the time the application is made.

(c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of the RSCFL holder's fishing vessel. If the third-party purchaser is less than 65 years of age, that purchaser shall pay the fee for the SCFL set forth in G.S. 113-168.2.

(d) Assignment. -- The RSCFL shall not be assignable.

"§ 113-168.4. Regulations concerning the sale of fish.

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange for merchandise these fish, without holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.

(b) It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) A person who organizes a nonprofit recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a nonprofit recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars ($100.00). A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. Proceeds derived from the sale of fish may be used only for charitable purposes.

"§ 113-168.5. License endorsements for Standard Commercial Fishing License and Retired Standard Commercial Fishing License.

(a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.

(b) Vessel Endorsements. --

(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:

a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;

b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or

c. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.

(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel for which the required license has been properly endorsed.

(3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:

a. One dollar ($1.00) per foot for a vessel not over 18 feet in length.

b. One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.

c. Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.

d. Six dollars ($6.00) per foot for a vessel over 50 feet in length.

(4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).

(5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL,

RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in the coastal fishing waters of the State, to land menhaden in the State, or to sell menhaden from a vessel in the State without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a menhaden endorsement shall be two dollars ($2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Division shall issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.

"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.

A person who is not a resident of North Carolina, who is not eligible for a SCFL under this Article, and who only seeks to engage in menhaden fishing is eligible to purchase a menhaden license for nonresidents. The fee for the menhaden license for nonresidents shall be two dollars ($2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The menhaden license for nonresidents shall be required for the mother ship to take, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden license for nonresidents must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days.

"§ 113-169.1. Other commercial licenses and permits authorized by the Commission.

The Commission may adopt rules to establish licenses or permits as set forth in this section. Licenses or permits shall be issued upon the payment of fees as prescribed by the Commission in its duly adopted rules at a rate to be established by the Commission. The fee rate for licenses or permits authorized under this section shall, at a minimum, be adequate to compensate the Division for the actual and administrative cost associated with the conservation and management of the fishery.

(1) Crew licenses. -- The Commission may adopt rules to establish an individual crew license for persons working aboard a vessel engaged in a commercial fishing operation at a rate not to exceed one hundred dollars ($100.00) per license.

(2) Permits. -- The Commission may adopt rules to establish permits for gear, equipment, and specialized activities at a rate not to exceed fifty dollars ($50.00) per permit. The Commission may require permits for commercial fishing operations that do not involve the use of a vessel. The Commission may require that a person obtain a special permit prior to transplanting oysters or clams.

"**§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

(a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public grounds of the State by mechanical means or for commercial use by any means without holding either a shellfish license or a shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to purchase a shellfish license without holding a SCFL or RSCFL. The license includes the privilege to sell shellfish to a licensed fish dealer.

(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City Office. Any person who is issued a shellfish license is eligible to renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a North Carolina resident: Provided, that persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's, or guardian's shellfish license.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish for commercial use from the public grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Limitation on Taking Shellfish Without a License. --

(1) A person who is not required to obtain a shellfish license under subsection (a) of this section shall not take more than:

a. One bushel of oysters per day.

b. One-half bushel of scallops per day.

c. One hundred clams per day.

(2) Two or more persons who are not required to obtain a shellfish license under subsection (a) of this section and who are using a vessel to take shellfish shall not take more than:

a. Two bushels of oysters per day.

b. One bushel of scallops per day.

c. Two hundred clams per day.

"**§ 113-169.3. Licenses for fish dealers.**

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application in the Morehead City Office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this article:

(1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;
(2) To sell fish to the public; or
(3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section.

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or official agency to sell fish taken or processed in connection with research or demonstration projects;
(2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;
(3) The fish are shipped to a person by a dealer from without the State;
(4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or
(5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars ($50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in oysters: $50.00;
(2) Dealing in scallops: $50.00;
(3) Dealing in clams: $50.00;
(4) Dealing in hard or soft crabs: $50.00;
(5) Dealing in shrimp, including bait: $50.00;
(6) Dealing in finfish, including bait: $50.00;

(7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: $50.00; or

(8) Consolidated license (all categories): $300.00.

Any person subject to fish dealer licensing requirements who deals in fish not included in the above categories shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this subsection. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location, expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.

(h) Application for Replacement License. -- A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.

(i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c), and the dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i). It is unlawful for any person to purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.

(j) Transfer Prohibited. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section.

"§ 113-169.4. Licensing of ocean fishing piers; fees.

(a) Every manager of an ocean fishing pier within the coastal fishing waters who charges the public a fee to fish in any manner from the pier shall secure a current and valid pier license from the Division. An application for a pier license shall disclose the names of all parties involved in the pier operations, including the owner of the property, owner of the pier if different, and all leasehold or other corporate arrangements, and all persons with a substantial financial interest in the pier.

(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license from the Division. The replacement license is issued without charge.

(c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier.

(d) The manager who secures the pier license shall be the individual with the duty of executive-level supervision of pier operations.

"**§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.**

(a) Persons aboard vessels not having their primary situs in the State that are carrying a cargo of fish taken outside the waters of the State may land or sell their catch in the State by purchasing a land or sell license as set forth in this section with respect to the vessel in question. The Commission may by rule modify the land or sell licensing procedure in order to devise an efficient and convenient procedure for licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

(b) The fee for a land or sell license for a vessel not having its primary situs in North Carolina is two hundred dollars ($200.00), or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. Persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land or sell their catch, taken outside the jurisdiction, may land or sell their catch in the State without complying with this section if the persons are in possession of a valid license from their state of residence.

"**§ 113-170. Exportation and importation of fish and equipment.**

The Commission may adopt rules governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State. These rules may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish that are native to coastal fishing waters or may thrive if introduced into these waters.

"**§ 113-170.1. Nonresidents reciprocal agreements.**

Persons who are not North Carolina residents are not entitled to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are entitled to North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions.

"**§ 113-170.2. Fraud or deception as to licenses, permits, or records.**

(a) It is unlawful for any person to give any false information or willfully to omit giving required information to the Division or any license agent when the information is material to the securing of any license or permit under this Article. It is unlawful to falsify, fraudulently alter, or counterfeit any license, permit, identification, or record to which this Article applies or otherwise practice any fraud or deception designed to evade the provisions of this Article or reasonable administrative directives made under the authority of this Article.

(b) A violation of this section is punishable by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

"**§ 113-170.3. Record-keeping requirements.**

(a) The Commission may require all licensees under this Article to keep and to exhibit upon the request of an authorized agent of the Department records and accounts as may be necessary to the equitable and efficient administration and enforcement of this Article. In addition, licensees may be required to keep additional information of a statistical nature or relating to location of catch as may be needed to determine conservation policy. Records and accounts required to be kept must be preserved for inspection for not less than three years.

(b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse to keep records and accounts as may be reasonably required. The Department may distribute forms to licensees to aid in securing compliance with its requirements, or it may inform licensees of requirements in other effective ways such as distributing memoranda and sending agents of the Department to consult with licensees who have been remiss. Detailed forms or descriptions of records, accounts, collection and inspection procedures, and the like that reasonably implement the objectives of this Article need not be embodied in rules of the Commission in order to be validly required.

(c) The following records collected and compiled by the Department shall not be considered public records within the meaning of Chapter 132 of the General Statutes, but shall be confidential and shall be used only for the equitable and efficient administration and enforcement of this Article or for determining conservation policy, and shall not be disclosed except when required by the order of a court of competent jurisdiction: all records, accounts, and reports that licensees are required by the Commission to make, keep, and exhibit pursuant to the provisions of this section, and all records, accounts, and memoranda compiled by the Department from records, accounts, and reports of licensees and from investigations and inspections, containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues, and profits; the number, capacity, capability, and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other seafood. The Department may compile statistical information in any aggregate or summary form that does not directly or indirectly disclose the identity of any licensee who is a source of the information, and any compilation of statistical information by the Department shall be a public record open to inspection and examination by any person, and may be disseminated to the public by the Department.

"§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries resources.

The Commission may adopt rules governing possession, transportation, and disposition of fisheries resources by all persons, including those not subject to fish dealer licensing requirements, in order that inspectors may adequately distinguish regulated coastal fisheries resources from those not so regulated and enforce the provisions of this Article equitably and efficiently. These rules may include

requirements as to giving notice, filing declarations, securing permits, marking packages, and the like.

"**§ 113-170.5. Violations with respect to coastal fisheries resources.**

It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in coastal fisheries resources without conforming with the provisions of this Article or of rules adopted under the authority of this Article.

"**§ 113-171. Suspension, revocation, and reissuance of licenses.**

(a) Upon receipt of reliable notice that a person licensed under this Article has had imposed against the person a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this Subchapter or of rules of the Commission adopted under the authority of this Subchapter, the Secretary must suspend or revoke all licenses held by the person in accordance with the terms of this section. Reliable notice includes information furnished the Secretary in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer for judgment continued are deemed convictions. The Secretary may act to suspend or revoke licenses upon the basis of any conviction in which:

(1) No notice of appeal has been given;

(2) The time for appeal has expired without an appeal having been perfected; or

(3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Secretary must initiate an administrative procedure designed to give the Secretary systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) of this section above and keep a file of all convictions reported. Upon receipt of notice of conviction, the Secretary must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Secretary must suspend all licenses issued to the licensee for a period of 10 days. In the case of third convictions, the Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from areas closed because of suspected pollution will be deemed by the Secretary to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.

(c) Where a license has been suspended or revoked, the former licensee is not eligible to apply for reissuance of license or for any additional license authorized in this Article during the suspension or revocation period. Licenses must be returned to the licensee by the Secretary or the Secretary's agents at the end of a period of suspension. Where there has been a revocation, application for reissuance of license or for an additional license may not be made until six months following the date of revocation. In such case of revocation, the eligible former licensee must satisfy the Secretary that the licensee will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and rules. Upon the application of an eligible former licensee after revocation, the Secretary, in the Secretary's discretion, may issue one license sought but not another, as deemed necessary to prevent the hazard of recurring violations of the law.

(d) Upon receiving reliable information of a licensee's conviction of a second or subsequent criminal offense covered by subsection (a) of this section, the Secretary shall promptly cause the licensee to be personally served with written notice of suspension or revocation, as the case may be. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation may be served by an inspector or other agent of the Department, must state the ground upon which it is based, and takes effect immediately upon personal service. The agent of the Secretary making service shall then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or records relating to the license as directed by the Secretary. It is unlawful for any licensee willfully to evade the personal service prescribed in this subsection.

(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final decision by the Secretary.

(f) If the Secretary refuses to reissue the license of or issue an additional license to an applicant whose license was revoked, the applicant may contest the decision by filing a petition for a contested case under G.S. 150B-23 within 20 days after the Secretary makes the decision. The Commission shall make the final agency decision in a contested case under this subsection. An applicant whose license is denied under this subsection may not reapply for the same license for at least six months.

(g) The Commission may adopt rules to provide for the disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in responsible positions of control are deemed to be individual licensees and subject to suspension and revocation requirements in regard to any applications for license they may make -- either as individuals or as persons in responsible positions of control in any corporation, partnership, or association. In the case of

individual licensees, the individual applying for a license or licensed under this Article must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under the provisions of this section, the Secretary may not consider convictions for:

(1) Offenses that occurred three years prior to the effective date of this Article; or

(2) Offenses that occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction.

"§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.

(a) Spotter Plane Defined. -- A 'spotter plane' is an aircraft used for aerial identification of the location of fish in coastal fishing waters so that a vessel may be directed to the fish.

(b) License. -- Before an aircraft is used as a spotter plane in a commercial fishing operation, the owner or operator of the aircraft must obtain a license for the aircraft from the Division. The fee for a license for a spotter plane is one hundred dollars ($100.00). An applicant for a license for a spotter plane shall include in the application the identity, either by boat or by company, of the specific commercial fishing operations in which the spotter plane will be used during the license year. If, during the course of the license year, the aircraft is used as a spotter plane in a commercial fishing operation that is not identified in the original license application, the owner or operator of the aircraft shall amend the license application to add the identity of the additional commercial fishing operation.

(c) Unlawful Activity. -- It shall be unlawful to:

(1) Use a spotter plane directed at food fish, except in connection with a purse seine operation authorized by a rule of the Commission.

(2) Use or permit the use of an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(3) Participate knowingly in a commercial fishing operation that uses an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(d) Violation a Misdemeanor. -- A violation of subsection (c) of this section is a Class 1 misdemeanor.

"§ 113-172. License agents.

(a) The Secretary shall designate license agents for the Department. At least one license agent shall be designated for each county that contains or borders on coastal fishing waters. The Secretary may designate additional license agents in any county if the Secretary determines that additional agents are needed to provide efficient service to the public. The Division and license agents designated by the Secretary under this section shall issue all licenses authorized under this Article in accordance with this Article and the rules of the Commission. The Secretary shall require license agents to enter into a contract that provides for their duties and compensation, post a bond,

and submit to reasonable inspections and audits. If a license agent violates any provision of this Article, the rules of the Commission, or the terms of the contract, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to renew a designation as a license agent and may impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

(b) License agents shall be compensated by adding a surcharge of one dollar ($1.00) to each license sold and retaining the surcharge. If more than one license is listed on a consolidated license form, the license agent shall be compensated as if a single license were sold. It is unlawful for a license agent to add more than the surcharge authorized by this section to the fee for each license sold.

"**§ 113-173. Recreational Commercial Gear License.**

(a) License Required. -- Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational quotas or limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (k) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar ($2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be

thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons."

Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this act and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A

of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that are renewed. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire 1 July 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria for determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal

fishing and protection of the environment; and any other factors the Commission determines to be relevant. The Division shall review each application for a SCFL that it receives during the application period to determine whether the applicant is eligible under the eligibility criteria established by the Commission. The Division shall issue SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

Section 5.3. The Marine Fisheries Commission shall adopt rules authorizing the use of a limited amount commercial gear for recreational fishing under a Recreational Commercial Gear License, as required by G.S. 113-173, as enacted by Section 5.1 of this act, on or before 1 July 1999.

Section 5.4. (a) G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article 14A of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act.

(b) G.S. 113-168.9(e), as recodified by subsection (a) of this section, reads as rewritten:

"(e) The owner of a vessel ~~licensed under G.S. 113-152~~ shall be eligible to purchase a vessel crab license for crabs as an alternative to the purchase of individual licenses under this section. A vessel crab license authorizes the owner of the vessel and up to two unlicensed persons serving as crew to fish for crabs from that vessel. It is unlawful for the owner of a vessel to take crabs from the coastal fishing waters of North Carolina for commercial use by any means, when unlicensed persons not authorized by the vessel crab license are on the vessel. The Secretary shall revoke a vessel crab license issued under this subsection ~~shall be revoked when~~ if the owner of the vessel or any other person using the owner's vessel is convicted of a violation under this ~~section, except for subsection (b).~~ section, other than conviction for a violation under subsection (b) of this section."

(c) All sections of Article 14 of Chapter 113 of the General Statutes other than G.S. 113-153.1 are repealed.

Section 5.5. The Marine Fisheries Commission shall adopt a Fishery Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of this act, no later than 1 January 2000.

Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S. 113-168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take crabs from the coastal fishing waters of the State for commercial use without being licensed under G.S. 113-168.9.

Section 5.7. G.S. 113-168.9, as recodified from G.S. 113-153.1 by Section 5.4 of this act, is repealed.

Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

"(2) When the transplanting is done by a dealer in accordance with the provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules; or".

Section 5.10. G.S. 113-154.1 reads as rewritten:

"**§ 113-154.1. Endorsement to sell fish.**

(a) Requirements. -- Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Marine Fisheries Commission from coastal fishing waters by any means whatever, including aquaculture operations, to sell, offer for sale, barter or exchange for merchandise such fish, without having first procured a current and valid endorsement to sell fish. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid vessel license with an endorsement to sell, or a separate endorsement to sell if no vessel is involved, at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-156.

(b) Fees. -- The annual fee for an endorsement to sell fish on a vessel license for a resident of this State is set forth in G.S. 113-152(h). The annual fee for an endorsement to sell fish when no vessel is involved for a resident of this State is fifteen dollars ($15.00) and for a nonresident of this State is one hundred dollars ($100.00) or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. The license shall be valid for the period July 1 through June 30 of a given year.

(c) Non-Vessel Endorsement Format. -- The format of an endorsement when the applicant is not seeking a vessel license shall include the name of the applicant, date of birth, expiration date of the endorsement, and any other information the Division deems necessary to accomplish the purposes of this Subchapter. The endorsement shall be issued on a card made of hard plastic or metal capable of being used to make imprints of the sale or transaction. An applicant who is applying for an endorsement on a vessel license shall comply with G.S. 113-152.

(d) Application for Non-Vessel Endorsement. -- An application for issuance or renewal of an endorsement to sell shall be filed with the Morehead City offices of the Division of Marine Fisheries or license agents authorized to sell licenses under this Article. An application shall be accompanied by the fee established in subsection (b) of this section. Applications shall not be accepted from persons ineligible to hold a license issued by the Marine Fisheries Commission, including any applicant whose endorsement is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the endorsement to sell, until the endorsement issued by the Division is received or the Division determines that the applicant is ineligible to hold an endorsement. In addition to the information required in subsection (c) of this section, the applicant shall disclose on the application a valid address, and such other information as the Division may require.

(e) Application for Replacement Non-Vessel Endorsement to Sell. -- A replacement endorsement shall only be obtained from the Morehead City offices of the Division of Marine Fisheries. The Division shall not accept an application for a replacement endorsement unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the endorsement until the replacement license has been received.

(f) Sale of Fish. -- It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of North Carolina or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-156; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-156.

(g) Recordkeeping Requirements. -- The fish dealer shall record each transaction on a form provided by the Department. The transaction form shall include the information on the endorsement to sell of the seller, the quantity of the fish, the identity of the fish dealer, and such other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Department, and to the other party of the transaction. The Department copy of each transaction from the preceding month shall be transmitted to the Department by the fish dealer on or before the tenth day of the following month.

(h) Non-Vessel Endorsement to Sell Nontransferable. -- ~~An~~ A non-vessel endorsement to sell fish issued under this section is nontransferable. It is unlawful to use ~~an~~ a non-vessel endorsement to sell issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a license to sell with the following two exceptions: (i) an individual under the age of 16 may sell fish under the license of a relative or guardian; or (ii) a license may be transferred within a single fishing operation if the person to whom it is transferred is a U.S. citizen. It is unlawful for a licensee to lend or transfer a license to sell for the purpose of circumventing the requirements of this section.

(h1) Endorsement to Sell Fish of a Vessel License Transferable. -- An endorsement to sell fish of a vessel license may be transferred to the purchaser of the vessel upon application to the Division of Marine Fisheries at the Morehead City office of the Division if the purchaser of the vessel is otherwise qualified to hold an endorsement to sell fish of a vessel license.

(i) **(See note)** Penalties. -- Any person who violates any provision of this section or any rule by the Marine Fisheries Commission to implement this section is guilty of a misdemeanor.

(1) A violation of subsections (a), (f), or (h) or a rule of the Marine Fisheries Commission implementing any of those subsections is punishable as follows:

a. For a first conviction or a subsequent conviction not described in subdivision (1)b. or c., a violation is a Class 3 misdemeanor. A fine shall be imposed of not less than fifty dollars ($50.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed two hundred fifty dollars ($250.00).

b. For a second conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than two hundred fifty dollars ($250.00) or double the value

of the fish which are the subject of the transaction, whichever is greater, not to exceed five hundred dollars ($500.00).

c. For a third or subsequent conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than five hundred dollars ($500.00) or double the value of the fish which are the subject of the transaction, whichever is greater.

(2) A violation of any other provision of this section other than subsections (a), (f), or (h), or of any rule of the Marine Fisheries Commission other than a rule implementing subsections (a), (f), or (h) of this section, is punishable under G.S. 113-135(a).

(j) Use of Fees. -- Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an endorsement to sell fish shall be applied to the cost of a fisheries data information system that compiles fisheries data obtained from the endorsement program established by G.S. 113-152 and this section or to marine fisheries programs or research projects that enhance knowledge and use of marine and estuarine resources."

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 6.1. (a) Subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session Laws, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July ~~1, 1994,~~ 1994 and ending ~~June 30, 1997,~~ 1 July 1999 under the following statutes:

(1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels, equipment, and operations; fees.

(2) G.S. 113-153.1. Crab ~~license.~~ License.

(3) G.S. 113-154. Shellfish ~~license~~ license.

(4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement to sell fish."

(b) It is the intent of the General Assembly that the moratorium imposed by the amendment made by subsection (a) of this section to subdivision (4) of subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session Laws shall apply to both non-vessel endorsements to sell fish and endorsements to sell fish of vessel licenses.

Section 6.2. Subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this act, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July 1994 and ending 1 July ~~1999~~ 2000 under ~~the following statutes:~~

~~(1) G.S. 113-152. Consolidated license for vessels, equipment, and operations; fees.~~

~~(2)~~ G.S. ~~113-153.1.~~ 113-168.9, Crab license.

~~(3) G.S. 113-154. Shellfish license.~~

~~(4) G.S. 113-154.1. Endorsement to sell fish.~~"

Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General Statutes is repealed, except that G.S. 143B-289.19 is not repealed but is recodified as G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes and reads as rewritten:

"**§ ~~143B-289.19.~~ 143B-289.40. Office of Marine Affairs -- creation.**

~~There~~ The Office of Marine Affairs is created in the Department of ~~Administration the Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

(b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

(c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this section, reads as rewritten:

"g. Create local advisory committees in accordance with the provisions of G.S. ~~143B-289.22.~~ 143B-289.42."

Section 6.4. The records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting and purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act, are transferred to the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act. All rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws, and all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.2 of this act, that have not been heretofore repealed or rescinded shall continue in effect until repealed or rescinded by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act.

Section 6.5. In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission

initially filling positions established by subdivisions (1), (2), and (3) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2001; the terms of members of the Commission initially filling positions established by subdivisions (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2000; the terms of members of the Commission initially filling positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 1999.

Section 6.6. G.S. 113-182(b) reads as rewritten:

"(b) The Marine Fisheries Commission is authorized to authorize, regulate, prohibit, prescribe, or restrict and the Department is authorized to license:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties.

(3) The possession, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all fish taken in the Atlantic Ocean out to a distance of 200 miles from the State's mean low watermark, consistent with the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., as amended. ~~when the harvest or landing of the fish is controlled by a quota imposed on the State by a federal fisheries management plan.~~"

Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

Section 6.8. All of the Coastal Habitat Protection Plans required by G.S. 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July 2003. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall make the first report on progress in developing and implementing Coastal Habitat Protection Plans, as required by G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1 September 1999. The Secretary of Environment, Health, and Natural Resources shall make the first report on progress in developing and implementing Fishery Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999.

Section 6.9. The Joint Legislative Commission on Seafood and Aquaculture shall study the establishment of a comprehensive State program to

acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, to the 1998 Regular Session of the 1997 General Assembly.

Section 6.10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 6.11. The Marine Fisheries Commission may adopt temporary rules to implement or comply with a fisheries management plan adopted by the Atlantic States Marine Fisheries Commission or an interstate fisheries management council.

Section 6.12. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 6.13. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996 Session Laws, Second Extra Session, and Section 12 of Chapter 256 of the 1997 Session Laws, reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire ~~August 1, 1997.~~ 1 July 1998."

Section 6.15. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.15 of this act are effective when this act becomes law. Sections 2.1, 4.4, 5.3, 6.3, 6.4, 6.5, 6.6, and 6.11 of this act become effective 1 September 1997. Sections 4.1 through 4.3 of this act become effective 1 September 1997 and apply to violations and offenses on or after 1 September 1997. Section 1.2 of this act is effective retroactively as of 1 March

1997. Sections 6.1 and 6.10 of this act become effective 31 July 1997. Section 6.14 of this act becomes effective 1 August 1997. Sections 3.1, 3.2, 3.3, 3.4, 3.5, 5.5, and 6.8 of this act become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6, 5.9, and 6.2 of this act become effective 1 July 1999. Section 5.6 of this act expires 1 July 2000. Section 5.7 of this act becomes effective 1 July 2000. Sections 5.1 and 5.2 of this act expire 1 September 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 5/15/97
Committee Substitute #3 Favorable 5/28/97
Fifth Edition Engrossed 6/10/97
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/23/97
Proposed Senate Committee Substitute H1097-PCS4143

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT, ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH CAROLINA.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,
The General Assembly of North Carolina enacts:

PART I. SHORT TITLE; PERFORMANCE AUDIT; STUDIES

Section 1.1. This act shall be known as the "Fisheries Reform Act of 1997".

Section 1.2. The State Auditor shall conduct a performance audit, including a detailed operational review, of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources. The performance audit shall include an assessment of the capacity of the Division of Marine Fisheries to effectively implement the provisions of Part V of this act. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998. The Joint Legislative Commission on Seafood and Aquaculture shall review the performance audit and make a specific recommendation to the 1998 Session of the 1997 General Assembly as to whether the provisions of Part V of this act should be implemented.

Section 1.3. The Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to licensing coastal recreational fishing. The Joint Legislative Commission on Seafood and Aquaculture shall make specific findings as to whether a licensing system should be adopted for coastal recreational fishing and, if so, what that system should be and how it should be implemented. In conducting the study required by this section, the Joint Legislative Commission on Seafood and Aquaculture shall consider the findings and recommendations of the final report of the Fisheries Moratorium Steering Committee and the final report of the State Auditor on the performance audit of the Division of Marine Fisheries required by Section 1.2 of this act. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Section 1.4. The Joint Legislative Commission on Seafood and Aquaculture shall study issues related to the establishment of a crew license for persons working aboard a vessel engaged in the taking of fish for sale. The Joint Legislative Commission on Seafood and Aquaculture shall make a specific determination as to whether a crew license should be established. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

Section 1.5. The Joint Legislative Commission on Seafood and Aquaculture shall study issues relating to the enhancement and management of shellfish resources and shall develop a set of comprehensive recommendations for the enhancement and management of the shellfish resources of the State. The Joint Legislative Commission on Seafood and Aquaculture shall present its findings and recommendations to the 1998 Regular Session of the General Assembly.

PART II. MARINE FISHERIES COMMISSION

Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part to read:

"Part 5B. Marine Fisheries Commission.

"**§ 143B-289.20. Definitions.**

(a) As used in this Part:

(1) 'Commission' means the Marine Fisheries Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Fisheries Director' means the Director of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply throughout this Part.

"**§ 143B-289.21. Marine Fisheries Commission -- creation; purposes.**

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment, Health, and Natural Resources.

(b) The functions, purposes, and duties of the Marine Fisheries Commission are to:

(1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources of the State.

(2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.

(3) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

"**§ 143B-289.22. Marine Fisheries Commission -- powers and duties.**

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources of the State including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:
  a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
  b. Seasons for taking fish.
  c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221(e).

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements and taxes prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by

the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(e) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(f) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

"§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Marine Fisheries Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Marine Fisheries Commission shall govern the following proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.

(2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources of the State arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the marine and estuarine resources of the State, to the public health, or to private property resulting from the violation.

(2) The frequency and gravity of the violation.

(3) The cost of rectifying the damage.

(4) Whether the violation was committed willfully or intentionally.

(5) The prior record of the violator in complying or failing to comply with programs over which the Marine Fisheries Commission has regulatory authority.

(6) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty

Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment, Health, and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary may delegate his powers and duties under this section to the Fisheries Director.

"**§ 143B-289.24. Marine Fisheries Commission -- members; appointment; term; oath; ethical standards; removal; compensation; staff.**

(a) Members, Selection. -- The Marine Fisheries Commission shall consist of nine members appointed by the Governor as follows:

(1) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(2) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the

criteria of this subdivision may be appointed under this subdivision.

(3) One person actively connected with, and experienced as, a licensed fish dealer or in seafood processing or distribution as demonstrated by deriving at least fifty percent (50%) of annual earned income from activities involving the buying, selling, processing, or distribution of seafood landed in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(4) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(5) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(6) One person actively engaged in the sports fishing industry as demonstrated by deriving at least fifty percent (50%) of annual earned income from selling goods or services in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(7) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(8) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(9) One person who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or sports fishing industries, including the processing and distribution of seafood.

(b) Residential Qualifications. -- For purposes of providing regional representation on the Commission, the following three coastal regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of subsection (a) of this section shall be residents of one of the coastal regions of the

State. The membership of the Commission shall include at least one person who is a resident of each of the three coastal regions of the State.

(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission.

(d) Terms. -- The term of office of members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (7), (8), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.

(e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

(f) Oath of Office. -- Each member of the Commission, before assuming the duties of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

(g) Ethical Standards. --

(1) Disclosure statements. -- Any person under consideration for appointment to the Commission shall provide both a financial disclosure statement and a potential bias disclosure statement to the Governor. A financial disclosure statement shall include statements of the nominee's financial interests in and related to State fishery resources use, licenses issued by the Division of Marine Fisheries held by the nominee or any business in which the nominee has a financial interest, and uses made by the nominee or by any business in which the nominee has a financial interest of the regulated resources. A potential bias disclosure statement shall include a statement of the nominee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the management and use of the State's coastal fishery resources. Disclosure statements shall be treated as public records under Chapter 132 of the General Statutes and shall be updated on an annual basis.

(2) Voting/conflict of interest. -- A member of the Commission shall not vote on any issue before the Commission that would have a 'significant and predictable effect' on the member's financial interest. For purposes of this subdivision, 'significant and predictable effect' means there is or may be a close causal link between the decision of the Commission and an expected

disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

(3) Regular attendance. -- It shall be the duty of each member of the Commission to regularly attend meetings of the Commission.

(h) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance.

(i) Office May Be Held Concurrently With Others. -- The office of member of the Marine Fisheries Commission may be held concurrently with any other elected or appointed office, as authorized by Article VI, Section 9, of the Constitution of North Carolina.

(j) Compensation. -- Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(k) Staff. -- All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department.

(l) Legal Services. -- The Attorney General shall: (i) act as attorney for the Commission; (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii) represent the Commission in any appeal or other review of any order of the Commission.

"**§ 143B-289.25. Marine Fisheries Commission -- officers; organization; seal.**

(a) The Governor shall appoint a member of the Commission to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve any number of consecutive terms.

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the

Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

(c) The Commission shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) The Commission may adopt a common seal and may alter it as necessary.

"**§ 143B-289.26. Marine Fisheries Commission -- meetings; quorum.**

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. At least three of the four quarterly meetings of the Commission shall be held in one of the coastal regions designated in G.S. 143B-289.24.

(b) Five members of the Commission shall constitute a quorum for the transaction of business.

"**§ 143B-289.27. Marine Fisheries Commission Advisory Committees established; members; selection; duties.**

(a) The Commission shall be assisted in the performance of its duties by four standing advisory committees and four regional advisory committees. Each standing and regional advisory committee shall consist of no more than 11 members. The Chair of the Commission shall designate one member of each advisory committee to serve as Chair of the committee. Members shall serve staggered three-year terms as determined by the Commission. The Commission shall establish other policies and procedures for standing and regional advisory committees that are consistent with those governing the Commission as set out in this Part.

(b) The Chair of the Commission shall appoint the following standing advisory committees:

(1) The Finfish Committee, which shall consider matters concerning finfish.

(2) The Crustacean Committee, which shall consider matters concerning shrimp and crabs.

(3) The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.

(4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

(c) Each standing advisory committee shall be composed of commercial and recreational fishermen, scientists, and other persons who have expertise in the matters to be considered by the advisory committee to which they are appointed. In making appointments to advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented and shall consider for appointment persons who are recommended by groups representing commercial fishing interests, recreational fishing interests, environmental protection

and conservation interests, and other groups interested in coastal fisheries management.

(d) Each standing advisory committee shall review all matters referred to the committee by the Commission and shall make findings and recommendations on these matters. A standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The Commission, in the performance of its duties, shall consider all findings and recommendations submitted by standing advisory committees.

(e) The Chair of the Commission shall appoint a regional advisory committee for each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint a regional advisory committee for that part of the State that is not included in the three coastal regions. In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented.

"**§ 143B-289.28. Marine Fisheries Endowment Fund.**

(a) Recognizing the inestimable importance to the State and its people of conserving the marine and estuarine resources of the State, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its marine and estuarine resources, there is created the North Carolina Marine Fisheries Endowment Fund, the income and principal of which shall be used only for the purpose of supporting marine and estuarine resource conservation programs of the State in accordance with this section.

(b) There is created the Board of Trustees of the Marine Fisheries Endowment Fund of the Marine Fisheries Commission, with full authority over the administration of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and members shall be the Chair, Vice-Chair, and members of the Marine Fisheries Commission. The State Treasurer shall be the custodian of the Marine Fisheries Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(c) The assets of the Marine Fisheries Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund.

(2) Any other sources specified by law.

(d) The Marine Fisheries Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Fund. In recognition of this special trust, the following limitations and restrictions are placed on expenditures from the Fund:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from the gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No expenditure or disbursement shall be made from the principal of the Marine Fisheries Endowment Fund except as otherwise provided by law.

(3) The income received and accruing from the investments of the Marine Fisheries Endowment Fund must be spent only to further the conservation of marine and estuarine resources.

(e) The Board of Trustees of the Marine Fisheries Endowment Fund may accumulate the investment income of the Fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget for the conservation and management of marine and estuarine resources. After that time the trustees, in their sole discretion and authority, may direct expenditures from the income of the Fund for the purposes set out in subdivision (3) of subsection (d) above.

(f) Expenditure of the income derived from the Marine Fisheries Endowment Fund shall be made through the State budget accounts of the Marine Fisheries Commission in accordance with the provisions of the Executive Budget Act. The Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(g) The Marine Fisheries Endowment Fund and the income therefrom shall not take the place of State appropriations, but any portion of the income of the Marine Fisheries Endowment Fund available for the purpose set out in subdivision (3) of subsection (d) above shall be used to supplement other income of and appropriations for the conservation and management of marine and estuarine resources to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

"§ 143B-289.29. Conservation Fund; Commission may accept gifts.

(a) The Marine Fisheries Commission may accept gifts, donations, or contributions from any sources. These funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management. These funds shall be administered by the Marine Fisheries Commission and shall be used for marine and estuarine resources management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Marine Fisheries Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources Conservation Fund that shall be made available to the Marine Fisheries Commission for conservation, protection, enhancement, preservation, and perpetuation of marine and estuarine species that may be endangered or threatened with extinction and for education about these issues. The special Conservation Fund is subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different sizes, shapes, types, or designs may be used to recognize contributions in different amounts, but no emblem shall be issued for a contribution amounting in value to less than five dollars ($5.00).

"**§ 143B-289.30. Article subject to Chapter 113.**

Nothing in this Article shall be construed to affect the jurisdictional division between the Marine Fisheries Commission and the Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter.

"**§ 143B-289.31. Jurisdictional questions.**

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment, Health, and Natural Resources and the Marine Fisheries Commission as to any duty, responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding."

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Section 3.1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.8. Coastal Habitat Protection Plans.**

(a) The Department shall coordinate the preparation of draft Coastal Habitat Protection Plans for critical fisheries habitats. The Department shall use the staff of those divisions within the Department that have jurisdiction over marine fisheries, water quality, and coastal area management in the preparation of the Coastal Habitat Protection Plans and shall request assistance from other federal and State agencies as necessary. The plans shall:

(1) Describe and classify biological systems in the habitats, including wetlands, fish spawning grounds, estuarine or aquatic endangered or threatened species, primary or secondary nursery areas, shellfish beds, submerged aquatic vegetation (SAV) beds, and habitats in outstanding resource waters.

(2) Evaluate the function, value to coastal fisheries, status, and trends of the habitats.

(3) Identify existing and potential threats to the habitats and the impact on coastal fishing.

(4) Recommend actions to protect and restore the habitats.

(b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall each appoint two members of the commission he or she chairs to a six-member review committee. The six-member review committee, in consultation with the Department, shall review the draft Plan and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the six-member review committee, shall then be submitted to the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries

Commission, each of which shall independently consider the Plan for adoption. If any of the three commissions is unable to agree to any aspect of a Plan, the chair of each commission shall refer that aspect of the Plan to a six-member conference committee to facilitate the resolution of any differences. The six-member conference committee shall be appointed in the same manner as a six-member review committee and may include members of the six-member review committee that reviewed the Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions adopted by all three commissions. The three commissions shall review and revise each Coastal Habitat Protection Plan at least once every five years.

(c) In carrying out their powers and duties, the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall ensure, to the maximum extent practicable, that their actions are consistent with the Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and does not oblige any commission to modify any rule adopted, permit decision made, or other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan by the three commissions. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall adopt rules to implement Coastal Habitat Protection Plans in accordance with Chapter 150B of the General Statutes.

(d) If any of the three commissions concludes that another commission has taken an action that is inconsistent with a Coastal Habitat Protection Plan, that commission may request a written explanation of the action from the other commission. A commission shall provide a written explanation: (i) upon the written request of one of the other two commissions, or (ii) upon its own motion if the commission determines that it must take an action that is inconsistent with a Coastal Habitat Protection Plan.

(e) The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Coastal Habitat Protection Plans, including the extent to which the actions of the three commissions are consistent with the Plans, on or before 1 September of each year."

(f) The Secretary of Environment, Health, and Natural Resources shall report to the Environmental Review Commission within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission shall review each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted to the Environmental Review Commission. The Environmental Review Commission may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary."

Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-subdivision to read:

"v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

The Commission shall approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.4. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-182.1. Fishery Management Plans.**

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.22.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(3) Include conservation and management measures that prevent overfishing, while achieving, on a continuing basis, the optimal yield from each fishery.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory Council shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fisheries Management Plan, once adopted, without the approval of the Secretary of Environment, Health, and Natural Resources.

(e) The Secretary of Environment, Health, and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. If the Secretary determines that the Division of Marine Fisheries has failed to develop or the Marine Fisheries Commission has failed to adopt a Fishery Management Plan in compliance with the Schedule, the Secretary may issue a proclamation prohibiting the taking of species to which the Plan would apply. The completion of any act within 30 days of the time specified by the Schedule constitutes compliance with the Schedule. A proclamation issued pursuant to this subsection is not subject to Article 2A of Chapter 150B of the General Statutes.

(f) The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year. The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted to the commission. The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary.

(g) The Marine Fisheries Commission shall adopt rules to implement Fishery Management Plans in accordance with Chapter 150B of the General Statutes."

Section 3.5. G.S. 113-129 is amended by adding two new subdivisions to read:

"(12a) Optimal yield. -- The amount of fish that:

a. Will provide the greatest overall benefit to the State, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

b. Is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

c. In the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in the fishery.

(12b) Overfishing or overfished. -- A rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis."

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1. G.S. 113-187 reads as rewritten:

"**§ 113-187. Penalties for violations of Subchapter and rules.**

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a ~~Class 2~~ Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

(1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.

(2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.

(3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.

(4) Violating the provisions of a special permit or gear license issued by the Department.

(5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas."

Section 4.2. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**

(a) Any person who sells fish in violation of G.S. 113-168.4 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(b) Any person who purchases fish in violation of G.S. 113-169.3 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(c) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Secretary against any person who sells fish in violation of G.S. 113-168.4 or purchases fish in violation of G.S. 113-169.3.

(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(e) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-289.23(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to G.S. 143B-289.23(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (e) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

Section 4.3. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part, particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of

the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. ~~Such~~ Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation."

Section 4.4. The Marine Fisheries Commission shall develop a Violation Points System applicable to the fishing licenses of all persons who violate marine fisheries statutes or rules. In developing this system, the Marine Fisheries Commission shall consider the recommendations made in the Final Report of the Moratorium Steering Committee and the suspension, revocation, and reissuance procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop an implementation schedule for the Violation Points System. The Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 July 1999, on the development of the Violation Points System and the implementation schedule.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 5.1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 14A.

"Coastal and Estuarine Commercial Fishing Licenses.

"**§ 113-168. Definitions.**

As used in this Article:

(1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation includes taking people fishing for hire.

(2) 'Commission' means the Marine Fisheries Commission.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment, Health, and Natural Resources.

(4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) 'North Carolina resident' means a person is a resident within the meaning of G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.

(6) 'RCGL' means Recreational Commercial Gear License.

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

(8) 'SCFL' means Standard Commercial Fishing License.

"**§ 113-168.1. General provisions for commercial licenses and endorsements.**

(a) Duration, Fees. -- All licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license shall pay the full annual license fee at the time the applicant applies for the license regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without being licensed as required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready at hand for inspection all valid licenses and endorsements required under this Article. To comply with this subsection, a person must have either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) an assignment of a SCFL authorized under this Article. A licensee or assignee shall not refuse to exhibit the licenses and endorsements upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid commercial or recreational fishing license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, address, and date of birth of the licensee; the date on which

the license is issued; the date on which the license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

"**§ 113-168.2. Standard Commercial Fishing License.**

(a) Requirement. -- No person shall engage in a commercial fishing operation in the coastal fishing waters without holding a Standard Commercial Fishing License issued by the Division. A person who works as a member of the crew of a vessel engaged in a commercial fishing operation under the direction of a person who holds a valid SCFL or RSCFL is not required to hold a SCFL or RSCFL.

(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.

(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten-dollar ($10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.

(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application.

(e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of North Carolina shall be two thousand dollars ($2,000) or the amount charged to a North Carolina resident in the nonresident's state, whichever is lesser.

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual, provided that a SCFL or RSCFL issued to the individual is not suspended or revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed. The assignment shall be in writing on a form provided by the Division and shall include the name of the licensee, the license number, any endorsements, the

assignee's name and mailing address, and the duration of the assignment. A notarized copy of the assignment shall be filed with the Division. The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel. The assignment may be revoked by: (i) written notification by the assignor that the assignment has been terminated; or (ii) a determination by the Division that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(g) Transfer. -- A SCFL may be transferred:

(1) By the license holder to a member of the license holder's immediate family.

(2) By the State to the estate of the license holder upon the death of the license holder.

(3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.

(4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.

(5) Under any other circumstance authorized by rule of the Commission.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the SCFL, RSCFL, or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction.

"**§ 113-168.3. Retired Standard Commercial Fishing License.**

(a) SCFL Provisions Applicable. -- Except as provided in this section, the provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fee. -- Any person who is 65 years of age or older and who is otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an annual fee of one hundred dollars ($100.00). Proof of age shall be supplied at the time the application is made.

(c) Transfer. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of the RSCFL holder's fishing vessel. If the third-party purchaser is less

than 65 years of age, that purchaser shall pay the fee for the SCFL set forth in G.S. 113-168.2.

(d) Assignment. -- The RSCFL shall not be assignable.

"§ 113-168.4. Regulations concerning the sale of fish.

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange for merchandise these fish, without holding a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.

(b) It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) A person who organizes a nonprofit recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a nonprofit recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars ($100.00). A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. Proceeds derived from the sale of fish may be used only for charitable purposes.

"§ 113-168.5. License endorsements for Standard Commercial Fishing License and Retired Standard Commercial Fishing License.

(a) A SCFL or RSCFL may be endorsed to authorize the use of a vessel in a commercial fishing operation.

(b) Vessel Endorsements. --

(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel has its primary situs in the State if:

a. A certificate of number has been issued for the vessel under Article 1 of Chapter 75A of the General Statutes;

b. A certificate of title has been issued for the vessel under Article 4 of Chapter 75A of the General Statutes; or

c. A certification of documentation has been issued for the vessel that lists a home port in the State under 42 U.S.C. § 12101, et seq., as amended.

(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. It is unlawful to use a North Carolina vessel to land or sell fish in the State that are taken during a commercial fishing operation outside the coastal fishing waters of the State without a vessel endorsement of the license required under this Article for that commercial fishing operation. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel for which the required license has been properly endorsed.

(3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:

a. One dollar ($1.00) per foot for a vessel not over 18 feet in length.

b. One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.

c. Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.

d. Six dollars ($6.00) per foot for a vessel over 50 feet in length.

(4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).

(5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL, RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in the coastal fishing waters of the State, to land menhaden in the State, or to sell menhaden from a vessel in the State without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a menhaden endorsement shall be two dollars ($2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Division shall issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.

"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.

A person who is not a resident of North Carolina, who is not eligible for a SCFL under this Article, and who only seeks to engage in menhaden fishing is eligible to purchase a menhaden license for nonresidents. The fee for the menhaden license for nonresidents shall be two dollars ($2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The menhaden license for nonresidents shall be required for the mother ship to take, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden license for nonresidents must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days.

"§ 113-169.1. Permits for gear, equipment, and other specialized activities authorized.

The Commission may adopt rules to establish permits for gear, equipment, and specialized activities, including commercial fishing operations that do not involve the use of a vessel and transplanting oysters or clams. The Commission shall establish a fee for each permit in an amount that compensates the Division for the actual administrative costs associated with the permit but that does not exceed fifty dollars ($50.00) per permit.

"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.

(a) License or Endorsement Necessary to Take or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public grounds of the State by mechanical means or for commercial use by any means without holding either a shellfish license or a shellfish endorsement of a SCFL or RSCFL. A North Carolina resident who seeks only to take and sell shellfish shall be eligible to purchase a shellfish license without holding a SCFL or RSCFL. The license includes the privilege to sell shellfish to a licensed fish dealer.

(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City Office. Any person who is issued a shellfish license is eligible to

renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a resident of North Carolina.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish for commercial use from the public grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the take or sale of shellfish. A vessel endorsement of a shellfish license does not authorize the use of the vessel for any commercial fishing operation other than the taking or selling of shellfish.

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transfer Prohibited. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Taking and Selling Shellfish Without a License. -- Persons under the age of 18 years of age may take and sell shellfish from the public or private grounds of the State during the period from May 15 through September 1 of each year without holding a shellfish license under this section.

(i) Taking Shellfish Without a License for Personal Use. --

(1) A person may take shellfish for personal use without obtaining a license under this section in quantities up to:

a. One bushel of oysters per day.

b. One-half bushel of scallops per day.

c. One hundred clams per day.

(2) Two or more persons who are using a vessel to take shellfish may take shellfish for personal use without obtaining a license under this section in quantities up to:

a. Two bushels of oysters per day.

b. One bushel of scallops per day.

c. Two hundred clams per day.

"§ 113-169.3. Licenses for fish dealers.

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application in the Morehead City Office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this article:

(1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;

(2) To sell fish to the public; or

(3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section.

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or

official agency to sell fish taken or processed in connection with research or demonstration projects;

(2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;

(3) The fish are shipped to a person by a dealer from without the State;

(4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or

(5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars ($50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in oysters: $50.00;

(2) Dealing in scallops: $50.00;

(3) Dealing in clams: $50.00;

(4) Dealing in hard or soft crabs: $50.00;

(5) Dealing in shrimp, including bait: $50.00;

(6) Dealing in finfish, including bait: $50.00;

(7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: $50.00; or

(8) Consolidated license (all categories): $300.00.

Any person subject to fish dealer licensing requirements who deals in fish not included in the above categories shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this subsection. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location, expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.

(h) Application for Replacement License. -- A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.

(i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c), and the dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i). It is unlawful for any person to

purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.

(j) Transfer Prohibited. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section.

"§ 113-169.4. Licensing of ocean fishing piers; fees.

(a) The owner or operator of an ocean fishing pier within the coastal fishing waters who charges the public a fee to fish in any manner from the pier shall secure a current and valid pier license from the Division. An application for a pier license shall disclose the names of all parties involved in the pier operations, including the owner of the property, owner of the pier if different, and all leasehold or other corporate arrangements, and all persons with a substantial financial interest in the pier.

(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license from the Division. The replacement license is issued without charge.

(c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier.

(d) The manager who secures the pier license shall be the individual with the duty of executive-level supervision of pier operations.

"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.

(a) Persons aboard vessels not having their primary situs in the State that are carrying a cargo of fish taken outside the waters of the State may land or sell their catch in the State by purchasing a land or sell license as set forth in this section with respect to the vessel in question. The Commission may by rule modify the land or sell licensing procedure in order to devise an efficient and convenient procedure for licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

(b) The fee for a land or sell license for a vessel not having its primary situs in North Carolina is two hundred dollars ($200.00), or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. Persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land or sell their catch, taken outside the jurisdiction, may land or sell their catch in the State without complying with this section if the persons are in possession of a valid license from their state of residence.

"§ 113-170. Exportation and importation of fish and equipment.

The Commission may adopt rules governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State. These rules may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish that are native to coastal fishing waters or may thrive if introduced into these waters.

"**§ 113-170.1. Nonresidents reciprocal agreements.**

Persons who are not North Carolina residents are not entitled to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are entitled to North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions.

"**§ 113-170.2. Fraud or deception as to licenses, permits, or records.**

(a) It is unlawful for any person to give any false information or willfully to omit giving required information to the Division or any license agent when the information is material to the securing of any license or permit under this Article. It is unlawful to falsify, fraudulently alter, or counterfeit any license, permit, identification, or record to which this Article applies or otherwise practice any fraud or deception designed to evade the provisions of this Article or reasonable administrative directives made under the authority of this Article.

(b) A violation of this section is punishable by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

"**§ 113-170.3. Record-keeping requirements.**

(a) The Commission may require all licensees under this Article to keep and to exhibit upon the request of an authorized agent of the Department records and accounts as may be necessary to the equitable and efficient administration and enforcement of this Article. In addition, licensees may be required to keep additional information of a statistical nature or relating to location of catch as may be needed to determine conservation policy. Records and accounts required to be kept must be preserved for inspection for not less than three years.

(b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse to keep records and accounts as may be reasonably required. The Department may distribute forms to licensees to aid in securing compliance with its requirements, or it may inform licensees of requirements in other effective ways such as distributing memoranda and sending agents of the Department to consult with licensees who have been remiss. Detailed forms or descriptions of records, accounts, collection and inspection procedures, and the like that reasonably implement the objectives of this Article need not be embodied in rules of the Commission in order to be validly required.

(c) The following records collected and compiled by the Department shall not be considered public records within the meaning of Chapter 132 of the General Statutes, but shall be confidential and shall be used only for the equitable and efficient administration and enforcement of this Article or for determining conservation policy, and shall not be disclosed except when required by the order of a court of competent jurisdiction: all records, accounts, and reports that licensees are required

by the Commission to make, keep, and exhibit pursuant to the provisions of this section, and all records, accounts, and memoranda compiled by the Department from records, accounts, and reports of licensees and from investigations and inspections, containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues, and profits; the number, capacity, capability, and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other seafood. The Department may compile statistical information in any aggregate or summary form that does not directly or indirectly disclose the identity of any licensee who is a source of the information, and any compilation of statistical information by the Department shall be a public record open to inspection and examination by any person, and may be disseminated to the public by the Department.

"§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries resources.

The Commission may adopt rules governing possession, transportation, and disposition of fisheries resources by all persons, including those not subject to fish dealer licensing requirements, in order that inspectors may adequately distinguish regulated coastal fisheries resources from those not so regulated and enforce the provisions of this Article equitably and efficiently. These rules may include requirements as to giving notice, filing declarations, securing permits, marking packages, and the like.

"§ 113-170.5. Violations with respect to coastal fisheries resources.

It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in coastal fisheries resources without conforming with the provisions of this Article or of rules adopted under the authority of this Article.

"§ 113-171. Suspension, revocation, and reissuance of licenses.

(a) Upon receipt of reliable notice that a person licensed under this Article has had imposed against the person a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this Subchapter or of rules of the Commission adopted under the authority of this Subchapter, the Secretary must suspend or revoke all licenses held by the person in accordance with the terms of this section. Reliable notice includes information furnished the Secretary in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer for judgment continued are deemed convictions. The Secretary may act to suspend or revoke licenses upon the basis of any conviction in which:

(1) No notice of appeal has been given;

(2) The time for appeal has expired without an appeal having been perfected; or

(3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Secretary must initiate an administrative procedure designed to give the Secretary systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) of this section above and keep a file of all convictions reported. Upon receipt of notice of conviction, the Secretary must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Secretary must suspend all licenses issued to the licensee for a period of 10 days. In the case of third convictions, the Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from areas closed because of suspected pollution will be deemed by the Secretary to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.

(c) Where a license has been suspended or revoked, the former licensee is not eligible to apply for reissuance of license or for any additional license authorized in this Article during the suspension or revocation period. Licenses must be returned to the licensee by the Secretary or the Secretary's agents at the end of a period of suspension. Where there has been a revocation, application for reissuance of license or for an additional license may not be made until six months following the date of revocation. In such case of revocation, the eligible former licensee must satisfy the Secretary that the licensee will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and rules. Upon the application of an eligible former licensee after revocation, the Secretary, in the Secretary's discretion, may issue one license sought but not another, as deemed necessary to prevent the hazard of recurring violations of the law.

(d) Upon receiving reliable information of a licensee's conviction of a second or subsequent criminal offense covered by subsection (a) of this section, the Secretary shall promptly cause the licensee to be personally served with written notice of suspension or revocation, as the case may be. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation may be served by an inspector or other agent of the Department, must state the ground upon which it is based, and takes effect immediately upon personal service. The agent of the Secretary making service shall then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or

records relating to the license as directed by the Secretary. It is unlawful for any licensee willfully to evade the personal service prescribed in this subsection.

(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final decision by the Secretary.

(f) If the Secretary refuses to reissue the license of or issue an additional license to an applicant whose license was revoked, the applicant may contest the decision by filing a petition for a contested case under G.S. 150B-23 within 20 days after the Secretary makes the decision. The Commission shall make the final agency decision in a contested case under this subsection. An applicant whose license is denied under this subsection may not reapply for the same license for at least six months.

(g) The Commission may adopt rules to provide for the disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in responsible positions of control are deemed to be individual licensees and subject to suspension and revocation requirements in regard to any applications for license they may make -- either as individuals or as persons in responsible positions of control in any corporation, partnership, or association. In the case of individual licensees, the individual applying for a license or licensed under this Article must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under the provisions of this section, the Secretary may not consider convictions for:

(1) Offenses that occurred three years prior to the effective date of this Article; or

(2) Offenses that occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction.

"**§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.**

(a) Spotter Plane Defined. -- A 'spotter plane' is an aircraft used for aerial identification of the location of fish in coastal fishing waters so that a vessel may be directed to the fish.

(b) License. -- Before an aircraft is used as a spotter plane in a commercial fishing operation, the owner or operator of the aircraft must obtain a license for the aircraft from the Division. The fee for a license for a spotter plane is one hundred dollars ($100.00). An applicant for a license for a spotter plane shall include in the application the identity, either by boat or by company, of the specific commercial fishing operations in which the spotter plane will be used during the license year. If, during the course of the license year, the aircraft is used as a spotter plane in a commercial fishing operation that is not identified in the original license application, the owner or operator of the aircraft shall amend the license application to add the identity of the additional commercial fishing operation.

(c) Unlawful Activity. -- It shall be unlawful to:

(1) Use a spotter plane directed at food fish, except in connection with a purse seine operation authorized by a rule of the Commission.

(2) Use or permit the use of an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(3) Participate knowingly in a commercial fishing operation that uses an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(d) Violation a Misdemeanor. -- A violation of subsection (c) of this section is a Class 1 misdemeanor.

"§ 113-172. License agents.

(a) The Secretary shall designate license agents for the Department. At least one license agent shall be designated for each county that contains or borders on coastal fishing waters. The Secretary may designate additional license agents in any county if the Secretary determines that additional agents are needed to provide efficient service to the public. The Division and license agents designated by the Secretary under this section shall issue licenses authorized under this Article in accordance with this Article and the rules of the Commission. The Secretary shall require license agents to enter into a contract that provides for their duties and compensation, post a bond, and submit to reasonable inspections and audits. If a license agent violates any provision of this Article, the rules of the Commission, or the terms of the contract, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to renew a designation as a license agent and may impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

(b) License agents shall be compensated by adding a surcharge of one dollar ($1.00) to each license sold and retaining the surcharge. If more than one license is listed on a consolidated license form, the license agent shall be compensated as if a single license were sold. It is unlawful for a license agent to add more than the surcharge authorized by this section to the fee for each license sold.

"§ 113-173. Recreational Commercial Gear License.

(a) License Required. -- Except as provided in subsection (j) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without holding a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to take fish for personal use subject to recreational quotas or limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (k) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar ($2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL. A holder of a RCGL shall not refuse to exhibit the RCGL upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignment and Transfer Prohibited. -- A RCGL is not transferable. Except as provided in subsection (j) of this section, it is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land

or to a privately owned pier without holding a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without holding a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons."

Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this act and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this act, to the licensing provision of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish that establish eligibility for a SCFL under subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that are renewed. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has

not been suspended or revoked. The Commission shall increase or decrease the number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who holds a valid endorsement to sell fish of a vessel license on 1 July 1999 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire 1 July 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria for determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal fishing and protection of the environment; and any other factors the Commission determines to be relevant. The Division shall review each application for a SCFL that it receives during the application period to determine whether the applicant is eligible under the eligibility criteria established by the Commission. The Division shall issue SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

Section 5.3. The Marine Fisheries Commission shall adopt rules authorizing the use of a limited amount commercial gear for recreational fishing under a Recreational Commercial Gear License, as required by G.S. 113-173, as enacted by Section 5.1 of this act, on or before 1 July 1999.

Section 5.4. (a) G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article 14A of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act.

(b) G.S. 113-168.9(e), as recodified by subsection (a) of this section, reads as rewritten:

"(e) The owner of a vessel ~~licensed under G.S. 113-152~~ shall be eligible to purchase a vessel crab license for crabs as an alternative to the purchase of individual licenses under this section. A vessel crab license authorizes the owner of the vessel and up to two unlicensed persons serving as crew to fish for crabs from that vessel. It is unlawful for the owner of a vessel to take crabs from the coastal fishing waters of North Carolina for commercial use by any means, when unlicensed persons not authorized by the vessel crab license are on the vessel. The Secretary shall revoke a vessel crab license issued under this subsection ~~shall be revoked when~~ if the owner of the vessel or any other person using the owner's vessel is convicted of a violation

under this ~~section, except for subsection (b).~~ section, other than conviction for a violation under subsection (b) of this section."

(c) All sections of Article 14 of Chapter 113 of the General Statutes other than G.S. 113-153.1 are repealed.

Section 5.5. The Marine Fisheries Commission shall adopt a Fishery Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of this act, no later than 1 January 2000.

Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S. 113-168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take crabs from the coastal fishing waters of the State for commercial use without being licensed under G.S. 113-168.9.

Section 5.7. G.S. 113-168.9, as recodified from G.S. 113-153.1 by Section 5.4 of this act, is repealed.

Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

"(2) When the transplanting is done by a dealer in accordance with the provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules; or".

Section 5.10. G.S. 113-154.1 reads as rewritten:

"**§ 113-154.1. Endorsement to sell fish.**

(a) Requirements. -- Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Marine Fisheries Commission from coastal fishing waters by any means whatever, including aquaculture operations, to sell, offer for sale, barter or exchange for merchandise such fish, without having first procured a current and valid endorsement to sell fish. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid vessel license with an endorsement to sell, or a separate endorsement to sell if no vessel is involved, at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-156.

(b) Fees. -- The annual fee for an endorsement to sell fish on a vessel license for a resident of this State is set forth in G.S. 113-152(h). The annual fee for an endorsement to sell fish when no vessel is involved for a resident of this State is fifteen dollars ($15.00) and for a nonresident of this State is one hundred dollars ($100.00) or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. The license shall be valid for the period July 1 through June 30 of a given year.

(c) Non-Vessel Endorsement Format. -- The format of an endorsement when the applicant is not seeking a vessel license shall include the name of the applicant, date of birth, expiration date of the endorsement, and any other information the Division deems necessary to accomplish the purposes of this Subchapter. The endorsement shall be issued on a card made of hard plastic or metal capable of being used to make

imprints of the sale or transaction. An applicant who is applying for an endorsement on a vessel license shall comply with G.S. 113-152.

(d) Application for Non-Vessel Endorsement. -- An application for issuance or renewal of an endorsement to sell shall be filed with the Morehead City offices of the Division of Marine Fisheries or license agents authorized to sell licenses under this Article. An application shall be accompanied by the fee established in subsection (b) of this section. Applications shall not be accepted from persons ineligible to hold a license issued by the Marine Fisheries Commission, including any applicant whose endorsement is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the endorsement to sell, until the endorsement issued by the Division is received or the Division determines that the applicant is ineligible to hold an endorsement. In addition to the information required in subsection (c) of this section, the applicant shall disclose on the application a valid address, and such other information as the Division may require.

(e) Application for Replacement Non-Vessel Endorsement to Sell. -- A replacement endorsement shall only be obtained from the Morehead City offices of the Division of Marine Fisheries. The Division shall not accept an application for a replacement endorsement unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the endorsement until the replacement license has been received.

(f) Sale of Fish. -- It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of North Carolina or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-156; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-156.

(g) Recordkeeping Requirements. -- The fish dealer shall record each transaction on a form provided by the Department. The transaction form shall include the information on the endorsement to sell of the seller, the quantity of the fish, the identity of the fish dealer, and such other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Department, and to the other party of the transaction. The Department copy of each transaction from the preceding month shall be transmitted to the Department by the fish dealer on or before the tenth day of the following month.

(h) Non-Vessel Endorsement to Sell Nontransferable. -- ~~An~~ A non-vessel endorsement to sell fish issued under this section is nontransferable. It is unlawful to use ~~an~~ a non-vessel endorsement to sell issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a license to sell with the following two exceptions: (i) an individual under the age of 16 may sell fish under the license of a relative or guardian; or (ii) a license may be transferred within a single fishing operation if the person to whom it is transferred is a U.S. citizen. It is

unlawful for a licensee to lend or transfer a license to sell for the purpose of circumventing the requirements of this section.

(h1) Endorsement to Sell Fish on a Vessel License Transferable. -- An endorsement to sell fish on a vessel license may be transferred to the purchaser of the vessel upon application to the Division of Marine Fisheries at the Morehead City office of the Division if the purchaser of the vessel is otherwise qualified to hold an endorsement to sell fish on a vessel license.

(i) **(See note)** Penalties. -- Any person who violates any provision of this section or any rule by the Marine Fisheries Commission to implement this section is guilty of a misdemeanor.

(1) A violation of subsections (a), (f), or (h) or a rule of the Marine Fisheries Commission implementing any of those subsections is punishable as follows:

a. For a first conviction or a subsequent conviction not described in subdivision (1)b. or c., a violation is a Class 3 misdemeanor. A fine shall be imposed of not less than fifty dollars ($50.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed two hundred fifty dollars ($250.00).

b. For a second conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than two hundred fifty dollars ($250.00) or double the value of the fish which are the subject of the transaction, whichever is greater, not to exceed five hundred dollars ($500.00).

c. For a third or subsequent conviction within three years, a violation is a Class 2 misdemeanor. A fine shall be imposed of not less than five hundred dollars ($500.00) or double the value of the fish which are the subject of the transaction, whichever is greater.

(2) A violation of any other provision of this section other than subsections (a), (f), or (h), or of any rule of the Marine Fisheries Commission other than a rule implementing subsections (a), (f), or (h) of this section, is punishable under G.S. 113-135(a).

(j) Use of Fees. -- Fees paid under G.S. 113-152(h) or G.S. 113-154.1 for an endorsement to sell fish shall be applied to the cost of a fisheries data information system that compiles fisheries data obtained from the endorsement program established by G.S. 113-152 and this section or to marine fisheries programs or research projects that enhance knowledge and use of marine and estuarine resources."

Section 5.11. G.S. 113-154 reads as rewritten:

"**§ 113-154. Shellfish license.**

(a) It is unlawful for an individual to take shellfish from the public or private grounds of North Carolina by mechanical means or for commercial use by any means without having first procured an individual shellfish license.

(b) It is unlawful for any individual to take shellfish for commercial use from the public or private grounds of North Carolina without having ready at hand for inspection a current and valid shellfish license issued to him personally and bearing his correct name and address. It is unlawful for any such individual taking or possessing freshly taken shellfish to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(c) Shellfish licenses are issued annually on a fiscal year basis upon payment of a fee of seven dollars and fifty cents ($7.50) upon proof that the license applicant is a resident of North Carolina. ~~Carolina: Provided, that persons under 16 years of age are exempt from the license requirements of this section if they are accompanied by their parent or guardian who is in compliance with the requirements of this section or if they have in their possession their parent's or guardian's shellfish license.~~

(c1) A shellfish leaseholder under G.S. 113-202, or a water column leaseholder under G.S. 113-202.1 or G.S. 113-202.2, or a franchise holder under G.S. 113-206 who purchases an individual shellfish license under this section, may employ persons who do not possess individual shellfish licenses, provided that the employees have written proof of employment on hand, if requested for inspection by a Marine Fisheries officer to verify lawful activities on the lease. The written proof of employment shall include: (i) the name and address of the leaseholder or franchise holder; (ii) the lease or franchise number; (iii) the date of issuance and expiration of the lease or franchise; and (iv) the employee's name and address. The proof of employment shall be signed and dated by the leaseholder or franchise holder.

(d) In the event an individual possessing a shellfish license changes his name or address or receives one erroneous in this respect, he must within 30 days surrender the license for one bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(e) It is unlawful for an individual issued a shellfish license to transfer or offer to transfer his license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Marine Fisheries Commission.

(f) Persons under the age of 18 years of age may take and sell shellfish from the public or private grounds of the State during the period from May 15 through September 1 of each year without holding a shellfish license under this section or an endorsement to sell fish under G.S. 113-154.1."

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 6.1. (a) Subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the

1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session Laws, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July ~~1, 1994,~~ 1994 and ending ~~June 30, 1997,~~ 1 July 1999 under the following statutes:

(1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels, equipment, and operations; fees.

(2) G.S. 113-153.1. Crab ~~license.~~ License.

(3) G.S. 113-154. Shellfish ~~license~~ license.

(4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement to sell fish."

(b) It is the intent of the General Assembly that the moratorium imposed by the amendment made by subsection (a) of this section to subdivision (4) of subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session Laws shall apply to both non-vessel endorsements to sell fish and endorsements to sell fish of vessel licenses.

Section 6.2. Subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; Section 7 of Chapter 256 of the 1997 Session Laws; and subsection (a) of Section 6.1 of this act, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July 1994 and ending 1 July ~~1999~~ 2000 under ~~the following statutes:~~

~~(1) G.S. 113-152. Consolidated license for vessels, equipment, and operations; fees.~~

~~(2)~~ G.S. ~~113-153.1.~~ 113-168.9, Crab license.

~~(3) G.S. 113-154. Shellfish license.~~

~~(4) G.S. 113-154.1. Endorsement to sell fish.~~"

Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General Statutes is repealed, except that G.S. 143B-289.19 is not repealed but is recodified as G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes and reads as rewritten:

"**§ ~~143B-289.19.~~ 143B-289.40. Office of Marine Affairs -- creation.**

~~There~~ The Office of Marine Affairs is created in the Department of ~~Administration the Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

(b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

(c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this section, reads as rewritten:

"g. Create local advisory committees in accordance with the provisions of G.S. ~~143B-289.22.~~ 143B-289.42."

Section 6.4. The records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting and purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act, are transferred to the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act. All rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws, and all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.2 of this act, that have not been heretofore repealed or rescinded shall continue in effect until repealed or rescinded by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act.

Section 6.5. In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission initially filling positions established by subdivisions (1), (2), and (3) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2001; the terms of members of the Commission initially filling positions established by subdivisions (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2000; the terms of members of the Commission initially filling positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 1999.

Section 6.6. G.S. 113-182(b) reads as rewritten:

"(b) The Marine Fisheries Commission is authorized to authorize, regulate, prohibit, prescribe, or restrict and the Department is authorized to license:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties.

(3) The possession, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all fish taken in the Atlantic Ocean out to a distance of 200 miles from the State's

mean low watermark, consistent with the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., as amended. ~~when the harvest or landing of the fish is controlled by a quota imposed on the State by a federal fisheries management plan.~~"

Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

Section 6.8. All of the Coastal Habitat Protection Plans required by G.S. 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July 2003. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall make the first report on progress in developing and implementing Coastal Habitat Protection Plans, as required by G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1 September 1999. The Secretary of Environment, Health, and Natural Resources shall make the first report on progress in developing and implementing Fishery Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999.

Section 6.9. The Joint Legislative Commission on Seafood and Aquaculture shall study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, to the 1998 Regular Session of the 1997 General Assembly.

Section 6.10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 6.11. The Marine Fisheries Commission may adopt temporary rules to implement or comply with a fisheries management plan adopted by the Atlantic States Marine Fisheries Commission or an interstate fisheries management council.

Section 6.12. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 6.13. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 6.14. Section 3 of Chapter 547 of the 1995 Session Laws, Regular Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995 Session Laws, Regular Session 1996, and Section 27.33 of Chapter 18 of the 1996

Session Laws, Second Extra Session, and Section 12 of Chapter 256 of the 1997 Session Laws, reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire ~~August 1, 1997.~~ 1 July 1998."

Section 6.15. Sections 1.1, 1.3, 1.4, 1.5, 5.8, 5.11, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.15 of this act are effective when this act becomes law. Sections 2.1, 4.4, 5.3, 6.3, 6.4, 6.5, 6.6, and 6.11 of this act become effective 1 September 1997. Sections 4.1 through 4.3 of this act become effective 1 September 1997 and apply to violations and offenses on or after 1 September 1997. Section 1.2 of this act is effective retroactively as of 1 March 1997. Sections 6.1 and 6.10 of this act become effective 31 July 1997. Section 6.14 of this act becomes effective 1 August 1997. Sections 3.1, 3.2, 3.3, 3.4, 3.5, 5.5, and 6.8 of this act become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6, 5.9, and 6.2 of this act become effective 1 July 1999. Section 5.6 of this act expires 1 July 2000. Section 5.7 of this act becomes effective 1 July 2000. Sections 5.1 and 5.2 of this act expire 1 September 2003.

Voted

1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1097V6-ART/SB-051.02 PCS4143

Date_____,1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Hoyle

moves to amend the bill on page 22, lines 33 through 36, by rewriting those lines to read:

"(e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of North Carolina shall be the greater of: (i) two hundred dollars ($200.00) plus any actual cost incurred by the Division in processing the license application that exceeds the cost of processing a license application from a North Carolina resident, or (ii) the amount charged to a North Carolina resident in the nonresident's state for an equivalent commercial fishing license or licenses."

SIGNED Jeff Hoyle
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Amendment #1
Amendment # 2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1097-ARB-7/31

Date _____ ,1997

Comm. Sub. [YES]
Amends Title []
H1097-PCS4143

Senator _____

as amended by Amendment Number 1,

moves to amend the bill on page 22, line 35 and 36, by rewriting the lines to read:

"of North Carolina shall be eight hundred dollars ($800.00) or the amount charged to a North Carolina resident in the nonresident's state, ~~which is lesser;~~ however, in no event may the fee be less than two hundred dollars ($200.00).".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

whichever is less;

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H1097V6-ART/SB-057.01 PCS4143 Page 1 of 1

Date ,1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Cochrane

moves to amend the bill on page 17, line 20,
by inserting, after the word "shall", the word "concurrently"; and

on page 17, line 22,
by deleting the words "to the commission." and substituting the words "by the Secretary.".

SIGNED Betsy Cochrane
Amendment Sponsor

SIGNED
Committee Chair if Senate Committee Amendment

ADOPTED FAILED TABLED

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. 4
(to be filled in by Principal Clerk)

H1097V6-ART/SB-055.01 PCS4143

Date _____,1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Cochrane

moves to amend the bill on page 15, lines 34 through 41, by rewriting those lines to read:

"(f) The Secretary of Environment, Health, and Natural Resources shall report to the Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture shall concurrently review each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted by the Secretary. The Environmental Review Commission and the Joint Legislative Commission on Seafood and Aquaculture may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary."

SIGNED Betsy Cochrane
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1097V6-ART/SB-052.02 PCS4143 Page 1 of 1

Date 5 ,1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Phillips

moves to amend the bill on page 14, line 22, by inserting, after the period on that line:

"The goal of the Plans shall be the long-term enhancement of coastal fisheries associated with each coastal habitat identified in subdivision (1) of this subsection.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Amendment pulled
By Sen. Perdue

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1097V6-ART/SB-059.05 PCS4143

Date 6 ,1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Perdue

moves to amend the bill on page 27, line 5,
by inserting, at the end of that line:

"Persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent, grandparent, or guardian who is in compliance with the requirements of this section or if in possession of a parent's, grandparent's, or guardian's shellfish license.";

on page 27, lines 28 through 31,
by rewriting those lines to read:

"(h) Limited Shellfish License for Persons Under the Age of 18. -- A resident of North Carolina who is under the age of 18 years may apply for a limited shellfish license at any office of the Division. A limited shellfish license issued under this subsection entitles the holder to take and sell shellfish from the public grounds of the State by mechanical means or for commercial use by any means only during the period from 15 May through 1 September of the year for which the license is issued. The holder of this license may sell shellfish only to a fish dealer licensed under G.S. 113-169.3 and is subject to the requirements of G.S. 113-170.3. The Division shall issue a limited shellfish license under this subsection at no charge upon proof that the applicant is a resident of North Carolina.";

on page 42, line 12,
by rewriting that line to read:

"resident of North Carolina. ~~Carolina: Provided, that persons~~ Persons under 16 years of age are";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1097V6-ART/SB-059.05 PCS4143

on page 42, lines 13 through 15 by removing the strike through of those lines;

on page 42, lines 35 through 38, by rewriting those lines to read:

"(f) A resident of North Carolina who is under the age of 18 years may apply for a limited shellfish license at any office of the Division. A limited shellfish license issued under this subsection entitles the holder to take and sell shellfish from the public grounds of the State by mechanical means or for commercial use by any means only during the period from 15 May through 1 September of the year for which the license is issued. The holder of this license may sell shellfish only to a fish dealer licensed under G.S. 113-156 and shall comply with the requirements of G.S. 113-163. The Division shall issue a limited shellfish license under this subsection at no charge upon proof that the applicant is a resident of North Carolina."; and

on page 43, line 13, by inserting, after "(b)":

"It is the intent of the General Assembly that the moratorium imposed by subdivision (3) of subsection (a) of Section 3 of Chapter 576 of the 1993 Session Laws, Regular Session 1994, as amended by Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994; subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws; and Section 7 of Chapter 256 of the 1997 Session Laws not apply to the issuance of a limited shellfish license under G.S. 113-154(f), as enacted by Section 5.11 of this act."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1097

AMENDMENT NO. 7
(to be filled in by Principal Clerk)

H1097V6-ART/SB-060.02 PCS4143

Date _____,1997

Comm. Sub. [YES]
Amends Title [NO]
Sixth Edition PCS4143

Senator Lee

moves to amend the bill on page 23, lines 37 through 40, by rewriting those lines to read:

"(b) Eligibility; Fees. -- Any person who is 65 years of age or older and who is otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL. Proof of age shall be supplied at the time the application is made. The annual fee for a RSCFL for a North Carolina resident shall be one hundred dollars ($100.00). The annual fee for a RSCFL for a person who is not a resident of North Carolina shall be eight hundred dollars ($800.00) or the amount charged to a North Carolina resident in the nonresident's state, whichever is less, however, in no event shall the fee be less than one hundred dollars ($100.00)."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1097-PCS4143 DATE _____

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Lee
)
Sen.)

moves to amend the bill on page 23, line 37-40

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"(b) Eligibility; Fee. -- ~~Any person~~ who is 65 years of age or ~~older, and who is otherwise eligible for a~~ SCFL ~~under~~ G.S. 113-168.2, and who is a

(b) Eligibility; Fee -- ~~Any person~~ who is 65 years of age or older and who is otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL. Proof of age shall be supplied at the time the application is made. The annual ~~fee for a RSCFL~~ fee for a North Carolina resident shall be one hundred dollars ($100.00). The annual ~~RSCFL~~ fee for a person who is not a resident of this ~~state~~ North Carolina shall be eight hundred dollars ($800.00) or the amount charged to a North Carolina resident in the nonresident's state, whichever is ~~greater~~ lesser; however, in no event ~~shall it be~~ SHALL the fee be less than one hundred ($100.00).

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

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July 29, 1997

MEMORANDUM

To: Senate Finance Committee

From: Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant

Re: **House Bill 1097, 6th edition - Fisheries Reform Act-2**

WHEREAS CLAUSES

The General Assembly recognizes

- The State of North Carolina has one of the most diverse fisheries in the United States;
- That commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood;
- The economic contribution and important heritage of commercial fishing;
- That for many citizens, fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction;
- The importance of plentiful fisheries resources to maintain and enhance tourism in the State; and
- The need to protect our coastal fisheries resources and to balance commercial and recreational interests.

PART I. SHORT TITLE; PERFORMANCE AUDIT

Section 1.1 entitles this act the Fisheries Reform Act of 1997.

Section 1.2 directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries (Division) and to assess the capacity of the Division of Marine Fisheries to effectively implement the licensing provisions (Part V) of this act. This section directs that the State Auditor report to the Joint Legislative Commission on Seafood and Aquaculture (Seafood and Aquaculture) by February 1, 1998, and directs Seafood and Aquaculture to review the performance audit and make a specific recommendation to the 1998 General Assembly as to whether or not the licensing provisions of this act should be implemented.

Effective Date: Audit is effective retroactively to March 1, 1997

PART II. MARINE FISHERIES COMMISSION

(Note: Current Marine Fisheries Commission (MFC) is repealed in Section 6.3(a) of this act.)

Section 2.1 amends Article 7 of Chapter 143B by adding a new Part entitled "Part 5B. Marine Fisheries Commission. This section:

- Reduces Marine Fisheries Commission (MFC) from 17 to 9 members comprised of:
  - two persons actively engaged in, or recently retired from, commercial fishing;
  - one person actively connected with, and experienced as, a licensed fish dealer or seafood processor;
  - two persons actively engaged in recreational sports fishing;
  - one person actively engaged in the sports fishing industry;
  - two persons having general knowledge of and experience related to subjects and persons regulated by the MFC; and,
  - one person who is a fisheries scientist.
- Provides that appointments are to be made by the Governor;
- Provides that at least 5 members must be residents of a coastal region of the State;
- Strengthens ethical standards;
- Establishes 4 standing advisory committees (Finfish Committee; Crustacean Committee; Shellfish Committee; Habitat & Water Quality Committee) comprised of commercial and recreational fishermen, scientists, and other experts. This section also establishes 4 regional advisory committees representing the different regions of the State; and
- Authorizes the MFC to act as an appellate body for civil penalty assessments and clarifies that unless otherwise provided, the MFC has the final decision making authority for contested cases within its jurisdiction.

Effective Date: Sept. 1, 1997

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Coastal Habitat Protection Plans (CHPPs)

Section 3.1 amends Chapter 143B by adding a new section, G.S. 143B-279.8 that directs DEHNR to coordinate the preparation of draft Coastal Habitat Protection Plans (CHPPs) for critical fisheries habitats. A CHPP shall: (i) describe and classify biological systems in habitats; (ii) evaluate the function, value to coastal fisheries, status, and trends of habitats; (iii) identify existing and potential threats to habitats and impacts on coastal fishing; and (iv) make recommendations to protect and restore critical fisheries habitats. Once a draft CHPP has been prepared, the MFC, Environmental Management Commission (EMC), and Coastal Resources Commission (CRC) must appoint a six-member review committee to review and revise the draft CHPP. The CHPP will then be submitted to each commission to consider for adoption. The commissions may appoint a six-member conference committee to facilitate the resolution of any aspect of a CHPP on which they cannot agree. The final CHPP will consist of the provisions concurrently agreed upon by all three commissions. Each CHPP must be reviewed and revised at least once every five years. Each commission must, to the maximum extent practicable, ensure that its actions are consistent with the CHPPs and must provide a written explanation of any action it takes that is inconsistent with a CHPP. Any rules adopted to implement the CHPPs must be done in accordance with the APA. The three commissions must report annually to the ERC and Seafood and Aquaculture on progress and implementation of CHPPs. The SEHNR must report to the ERC within 30 days of the completion, or substantial revision of the CHPPs, and the ERC has 30 days to review and comment.

Sections 2.1, 3.2, and 3.3 direct the MFC, EMC, and the CRC to adopt CHPPs.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Effective Date: July 1, 1998.

Fishery Management Plans

Section 3.4 amends Chapter 113 by adding a new section, G.S. 113-182.1 that directs DEHNR to prepare proposed Fishery Management Plans (FMPs) for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. The FMPs are to be developed in accordance with a Priority List, Schedule, and guidance criteria established by MFC. The FMPs must incorporate fishery habitat and water quality considerations consistent with CHPPs, recommend management actions, and conservation and management measures. Any rules adopted to implement a FMP must be done in accordance with the APA. This section provides that Advisory Councils composed of experts on each particular fishery will assist in the development of the FMPs, and that the Secretary of Environment, Health and Natural Resources (SEHNR) will monitor progress of development and adoption of FMPs and will report annually to the ERC and Seafood and Aquaculture on this progress. This section also requires that the SEHNR report to Seafood and Aquaculture and the ERC within 30 days of the completion or substantial revision of the FMPs and gives Seafood and Aquaculture and the ERC 30 days to review and comment. Finally, this section authorizes the SEHNR to issue a proclamation prohibiting the taking of certain fisheries resources if there is a failure to complete the FMP according to the Schedule.

Section 3.5 amends G.S. 113-129, Definitions relating to resources, to add definitions for "optimal yield" and "overfishing or overfished".

Section 2.1 directs the MFC to establish a Priority List, schedule, and guidance criteria for FMPs.

Effective Date: July. 1, 1998.

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1 amends G.S. 113-187 to increase the penalties for violation of general fisheries laws.

Section 4.2 adds G.S. 113-190 to increase the penalties for the unlawful sale or purchase of fish. This section also authorizes the SEHNR to assess a civil penalty up to $10,000 for illegal sale or purchase of fish.

Section 4.3 amends G.S. 113-221(e) to authorize the Fisheries Director to determine, on a case-by-case basis and in the Director's sole discretion, that a proclamation did not apply to a licensee who was without notice due to an act of God or unforeseeable circumstance.

Section 4.4 directs the MFC to develop a Violations Points System and implementation schedule and report to Seafood and Aquaculture by July 1, 1999 on the development of the Violation Points System and the implementation schedule.

Effective Date: Sept. 1, 1997; provisions apply to violations and offenses on or after September 1, 1997.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Standard Commercial Fishing License (SCFL)

Section 5.1 establishes Article 14A of G.S. 113 to be entitled the Coastal and Estuarine Commercial Fishing Licenses which establishes SCFLs as follows:

- Entitles holder to sell fish;
- Fees: $200 for residents; $2,000 for nonresidents or the amount charged to a NC resident in the nonresident's state, whichever is less;
- Assignability - SCFL is assignable. Vessel endorsements may be assigned independently of SCFL to another SCFL holder;
- Transferability - SCFLs may be transferred under certain circumstances to a member of the SCFL holder's estate; a third-party purchaser of the SCFL holder's fishing vessel; or as authorized by MFC; and
- Vessel endorsement required for an additional fee based on length of vessel.

Other commercial fishing licenses

Section 5.1 also provides for the following:

- Retired SCFL available to persons 65 and older for an annual fee of $100;
- Shellfish license for NC residents not holding a SCFL available for $25; and
- Fish dealer license available for various fees.

Section 5.2 establishes provisions to implement Section 5.1. These transitional provisions apply to the issuance of fishing licenses until all FMPs have been adopted. These provisions provide for the following:

- Eligibility - SCFLs are available to any person who holds an endorsement to sell on July 1, 1999;
- Flexibility for new entrants - 500 SCFLs will be available for distribution by lot for persons not otherwise eligible for a SCFL;
- Establishment of a temporary cap on the total number of SCFLs the MFC may issue. The temporary cap is equal to the total number of endorsements to sell that establish eligibility for a SCFL plus an additional 500 SCFLs for new entrants;
- For the 1999-2000 license year, the MFC is authorized to:
    - issue an SCFL to any person who held a valid endorsement to sell fish prior to July 1, 1999;
    - issue an SCFL to any person who filed a petition with the Appeals Panel which was denied; and,
    - distribute an additional 500 SCFLs by lot.

  For subsequent license years, the MFC is authorized to issue licenses from the pool of available SCFLs. (The pool of available SCFLs is the temporary cap less the number of SCFLs renewed from the previous license year.)

Effective Date: July 1, 1999.

Recreational Commercial Gear License (RCGL)

Section 5.1 also establishes a Recreational Commercial Gear License (RCGL) as follows:

- RCGL holder may use limited amounts of commercial gear;
- License holder is not entitled to sell fish; and
- Fees: $35 for residents; $250 for nonresidents.

Section 5.3 directs the MFC to adopt rules authorizing the use of a limited amount of commercial gear for recreational fishing by July 1, 1999.

Effective Date: July 1, 1999

Sections 5.4, 5.5, 5.6, 5.7 and 6.2 govern the taking of crabs by:

- Retaining the current crab license;
- Extending the moratorium on the issuance of crab licenses until July 1, 2000;
- Directing the MFC to adopt a blue crab FMP by January 1, 2000; and
- Providing that only those persons currently holding crab licenses may take crabs.

Section 5.10 makes the Endorsement to Sell transferable to the purchaser of a vessel.

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATE.

Section 6.1 extends moratorium on issuance of licenses from July 31, 1997, to July 1, 1999 and alters the moratorium on licenses to include all Endorsements to Sell (vessel and non-vessel); effective July 31, 1997.

Section 6.3 recodifies G.S. 143B-289.19 to G.S. 143B-289.40 and makes technical and clarifying changes.

Section 6.4 transfers all records personnel, property, unexpended funds and functions from the current Marine Fisheries Commission to the Marine Fisheries Commission established by this act.

Section 6.5 establishes staggered terms for members of the MFC.

Section 6.6 authorizes the MFC to regulate NC fisheries consistent with federal law.

Section 6.7 recodifies G.S. 113-190 to G.S. 113-200.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Section 6.9 directs Seafood and Aquaculture to study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. Seafood and Aquaculture will report its findings and recommendations, if any, to the 1998 Regular Session of the General Assembly.

Section 6.10 clarifies that this act constitutes a recent act of the General Assembly pursuant the G.S. 150B (APA), and therefore, agencies are authorized to adopt temporary rules to implement the provisions of this act. This section will continue to be in effect until all rules necessary to implement this act have been adopted as temporary or permanent rules.

Section 6.11 authorizes the MFC to adopt temporary rules to comply with fisheries management plans adopted by an interstate fisheries management council.

Section 6.12 Part Headings as convenience for reader only.

Section 6.13 Severability Clause.

Section 6.14 extends the moratorium on new shellfish cultivation leases in a portion of Core Sound from August 1, 1997 to July 1, 1998; effective August 1, 1997.

Section 6.15 Effective Dates.

H1097-SMSB-003

Use of Marine Fisheries License Revenues

Receipts generated from the sale of marine fisheries licenses and endorsements are not credited to the General Fund, but are treated as departmental receipts and therefore retained by the Department of Environment, Health, Natural Resources. License revenue is used by the Division of Marine Fisheries to offset the cost of various marine fisheries programs, including licensing administration, data collection efforts for commercial landings and law enforcement. The provisions of House Bill 1097 do not propose to change the treatment of license receipts. The following table identifies the amount of revenue generated by license type and the distribution of license receipts by program for the 1996-97 fiscal year:

License Revenues and Expenditures
1996-97 Fiscal Year
(Authorized)

Revenue by License/Endorsement Type

Endorsements to Sell	$301,475
Vessel License	$581,672
Dealer License	$80,483
Spotter Plane License	$2,000
Shellfish/Crab License	$72,157
Ocean Pier License	$9,271
Oyster Bottom Rental Fee	$14,318
	$1,061,376

Distribution of License Revenue

License Administration Section	$120,590
Statistics and Information Section	$180,885
Marine Patrol Section	$759,901
	$1,061,376

PROPOSED SENATE FINANCE COMMITTEE CHANGES TO HB 1097, 6th EDITION - FISHERIES REFORM ACT - 2

July 29, 1997

The proposed Senate committee substitute:

- Requires the Joint Legislative Commission on Seafood and Aquaculture to determine if and how a recreational saltwater fishing license should be implemented and report to the 1998 Regular Session of the General Assembly.

- Crew Licenses
  - Removes the authority of the Marine Fisheries Commission to establish a crew license; and,
  - Requires the Joint Legislative Commission on Seafood and Aquaculture to study whether a crew license should be established and report to the 1998 Regular Session of the General Assembly.

- Requires the Joint Legislative Commission on Seafood and Aquaculture to develop a comprehensive approach for the enhancement and management of shellfish resources and report to the 1998 Regular Session of the General Assembly.

- Exempts persons under 18 years of age from shellfish license and endorsement to sell requirements during the period from May 15 to September 1 of each year and makes correcting changes for persons taking shellfish for personal use.

Mary Beach Shuping
Research Division
07/28/97/9:23 PM

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1097 (Sixth Edition)
SHORT TITLE: Fisheries Reform Act - 2
SPONSOR(S): Representatives Preston & Redwine

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Departmental Receipts from Licensing Revenue			$355,151	$490,306	$623,927
EXPENDITURES					
Performance Audit	$25,000				
Marine Fisheries Commission	$114,384	$114,384	$114,384	$114,384	$114,384
Coastal Habitat Protection Plans		$294,847	$283,489	$290,028	$296,988
Fisheries Management Plans		$1,256,483	$1,082,770	$1,100,498	$1,116,298
Licensing Program Administration *		$542,491	$511,191	$521,632	$532,747
TOTAL EXPENDITURES	$139,384	$2,208,205	$1,991,834	$2,026,542	$2,060,417
NET GENERAL FUND COST	$139,384	$2,208,205	$1,636,683	$1,536,236	$1,436,490
POSITIONS:		34.25	34.25	34.25	34.25

Licensing administration to be phased in during the 1998-99 fiscal year to have necessary equipment and personnel in place July 1, 1999.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment, Health, and Natural Resources - Marine Fisheries Commission, Division of Marine Fisheries; Department of Correction; Judicial Department; Office of the State Auditor

EFFECTIVE DATE: Part I (performance audit) is effective retroactively to March 1, 1997. Part II (Marine Fisheries Commission), Part IV (Marine Fisheries Law Enforcement) and sections 5.3, 6.3, 6.4, 6.5, 6.6 , and 6.11 are effective September 1, 1997. Part III (Coastal Habitat Protection Plans and Fishery Management Plans) is effective July 1, 1998. Part V (Commercial Fishing Licenses) is effective July 1, 1999. Part VI, section 6.1 (extend moratorium on licenses) is effective July 31 ,1997. Sections 5.1 and 5.2 expire September 1, 2003. Section 5.6 (crab license) will expire July 1, 2000 and section 5.7 will become effective July 1, 2000. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.15 are effective when the act becomes law.

BILL SUMMARY: Part I of the bill directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries and to present the audit to the General Assembly by February 1, 1998. Part II of the bill reduces the membership of the Marine Fisheries Commission from 17 to 9 and changes the type of appointments to the Commission. Part III directs the Department of Environment, Health, and Natural Resources (DEHNR) to coordinate the preparation of draft Coastal Habitat Protection Plans and to prepare Fishery Management Plans for all commercially and recreationally significant fish species. Part IV increases the penalties for violating general fisheries laws. Part V creates a Standard Commercial Fishing License (SCFL) priced at $200 for residents and $2000 for nonresidents. Owners of a SCFL must have a vessel endorsement whose price is based on vessel length. This Part also creates a $35 Recreational Commercial Gear License (RCGL) for recreational fishermen who want to use commercial gear such as shrimp nets and crab pots. This Part also makes changes in dealer licenses and other minor licenses. Part VI has miscellaneous provisions dealing with the moratorium on fishing licenses, the staggered terms of Marine Fisheries Commission members, and further legislative study of marine and estuarine fisheries habitats.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

The differences in the current fishing licenses and the licenses proposed by HB 1097 are shown in the chart below and on page 3. The major change is the creation of the Standard Commercial Fishing License (SCFL) and the Recreational Commercial Gear License (RCGL), and the deletion of Endorsements to Sell.

LICENSE TYPE	CURRENT LAW	HB 1097
Standard Commercial Fishing Lic. (SCFL)		
Resident		$200
Nonresident		$2,000
Retired		$100
Replacement		$10
Vessel Endorsements	0-18 ft @ $1.00/ft	0-18 ft @ $1.00/ft
	18-38 ft @ $1.50/ft	18-38 ft @ $1.50/ft
	>38 ft @ $3.00/ft	38-50 ft @ $3.00/ft
		>50 ft @ $6.00/ft
	nonresident = $200	
Endorsement to Sell	0-18 ft @ $25	
	18-38 ft @ $35	
	>38 ft @ $45	
Fish Dealers		
Oysters	$50 stock shipper/$100 shucker	$50
Scallops	$50 stock shipper/$100 shucker	$50

LICENSE TYPE	CURRENT LAW	HB 1097
Fish Dealers (continued)		
Clams	$50 stock shipper/$100 shucker	$50
Crabs	$50 unprocessed/$100 processed	$50
Shrimp (incl. bait)	$50 unprocessed/$100 processed	$50
Finfish (incl. bait)	$50 unprocessed/$100 processed	$50
Dehydrating or oil-extracting plant	$50 fish dehydrating/$100 menhaden	$50
Consolidated		$300
Other		
Shellfish	$7.50	$25
Crab	$7.50	$7.50
Shellfish and crab	$15.00	
Vessel Crab	$22.50	
Menhaden	$2 per gross ton	$2 per gross ton
Spotter airplane	$100	$100
Tournament		$100
Ocean Fishing Pier	$0.50 per ft	$0.50 per ft
Crew Licenses	MFC authority to adopt	not to exceed $100
Permit for gear, equipment, special activity	MFC authority to adopt	not to exceed $50
Land or Sell License	$200	$200
Recreational Commercial Gear Lic. (RCGL)		Resident $35

The change in fishing licenses will increase revenue to the Division of Marine Fisheries beginning in FY 1999-00. In FY 1995-96, the primary revenue from fishing license receipts came from vessel endorsements ($700,137), endorsements to sell ($243,365), and dealers ($86,050). The revenue lost from reducing the number of ships needing vessel endorsements, abolishing the endorsement to sell; and reducing the dealer fees is replaced by the $200 SCFL and the $35 RCGL. When the new licenses become effective in FY 1999-00, the SCFL will yield $780,000 in revenue and the RCGL will earn $455,000 as shown below.

License Type	License Cost	Estimated Licenses	FY 1999-00	FY 2000-01	FY 2001-02
Standard Comm. Fishing Lic. (SCFL)					
Resident	$200	3900 (initial)	$780,000	$880,000	$980,000
Retired/Nonresident	$100/$2000	NA			
Vessel Endorsements	0-18 ft @ $1.00/ft	1,825	$29,383	$33,295	$37,078
	18-38 ft @ $1.50/ft	1,759	$64,643	$72,765	$81,034
	38-50 ft @ $3.00/ft	168	$22,025	$23,074	$25,696
	>50 ft @ $6.00/ft	148	$61,627	$73,286	$81,614
Fish Dealers					
Oysters	$50	57	$2,850	$2,936	$3,024
Scallops	$50	17	$850	$876	$902
Clams	$50	34	$1,700	$1,751	$1,804
Crabs	$50	114	$5,700	$5,871	$6,047

License Type	License Cost	Estimated Licenses	FY 1999-00	FY 2000-01	FY [redacted]
Fish Dealers (continued)					
Shrimp (incl. bait)	$50	143	$7,150	$7,365	$7,585
Finfish (incl. bait)	$50	177	$8,850	$9,116	$9,389
Dehydrating or oil-extracting plant	$50	3	$150	$150	$150
Consolidated	$300	0	$0	$0	$0
Other					
Shellfish	$25	300	$7,500	$7,500	$7,500
Menhaden	$2 per gross ton	20	$25,000	$25,000	$25,000
Spotter airplane	$100	20	$2,000	$2,000	$2,000
Crab	$7.50	4,500	$33,750	$33,750	$33,750
Tournament	$100	20 (initial)	$2,000	$2,500	$3,000
Ocean Fishing Pier	$0.50 per ft	20	$6,000	$6,000	$6,000
Crew Licenses	$100	0			
Permit for gear,equipment,special activity	$50	0			
Recreational Comm. Gear Lic. (RCGL)	Resident $35	13,000	$455,000	$464,100	$473,382
	Non-Resident $250	NA			
Revenue from HB 1097			$1,516,178	$1,651,333	$1,784,954
FY 95-96 Revenue from Existing Fees			$1,161,027	$1,161,027	$1,161,027
Net revenue gain to Marine Fish. Div.			**$355,151**	**$490,306**	**$623,927**

The Division of Marine Fisheries estimates that 3,900 SCFLs will be purchased in FY1999-00. It assumes that only a portion of the fishermen now holding Endorsements-to-Sell (ETS) will buy the new license. In FY 1994-95 there were 6,539 individuals with ETS licenses. Of this number, 45% or 2,943 sold less than $1,000 worth of seafood. The Division assumes that the $200 license will discourage most of these low volume fishermen from obtaining a SCFL. The Division projects 3,780 individuals with a ETS license will apply for the SCFL. In addition, the Division assumes that the owners of 120 vessels that were granted vessel licenses through the appeals process in the last few years will also apply for a license. This brings the total to 3,900. This number will grow to 4,400 in FY 2000-01 and to 4,900 in FY 2001-02 when additional licenses are made available to new entrants into the market.

The owners of a SCFL must also buy a vessel endorsement. The cost of the endorsement is based on vessel length. The average length of the vessel and the percent of vessels in each category are shown below.

0-18 ft @ $1.00/ft	16.1 ft.	47%
18-38 ft @ $1.50/ft	24.5 ft	45%
38-50 ft @ $3.00/ft	43.7 ft.	4%
>50 ft @ $6.00/ft	69.4 ft.	4%

Of the 22,000 vessels that can now obtain vessel licenses and use commercial fishing gear in North Carolina, the Division estimates that 14,500 are owned by recreational fishermen. The Division believes 13,000 recreational fishermen will opt to buy the RCGL instead of the SCFL.

The number of dealers and other licenses shown in the chart are also estimates of the Division. The dealers licenses are grown by 3% a year.

EXPENDITURES

The Division of Marine Fisheries is currently authorized to use the proceeds from the sale of licenses and vessel endorsements to offset the operating costs of the License Administration Section, the Statistics and Information Management Section and the Marine Patrol Section. Although this legislation will increase license revenues beginning with the 1999-2000 fiscal year, the increased receipts will not be enough to offset the costs associated with implementing all the provisions of this act. Therefore , General Fund support will be required. However, revenues are projected to be sufficient to cover the increased costs associated with administering the licensing provisions by the 2001-2002 fiscal year.

- Marine Fisheries Commission *Effective September 1, 1997*

The bill reduces the membership of the Marine Fisheries Commission from seventeen to nine and establishes four technical advisory committees and four regional advisory committees.

The Division of Marine Fisheries estimates the annual operating costs of the reformed commission, exclusive of the advisory committees, to be $85,680. This estimate is based on a total travel ($178) and per diem ($100) rate of $278 per day for commission members in accordance with G.S. 138-6 and assumes the commission will meet up to eight times per year, for up to three days (9 members x $278/day x 8 meetings x 3 days/meeting = $60,048). In addition, the estimate includes allowed subsistence of $178 per day for two representatives from the Office of the Attorney General (2 representatives x $178/day x 8 meetings x 3 days/meeting = $8,544). Subsistence expenses for an ad hoc committee of twelve members are also included in the estimate, as the chair of the commission may appoint ad hoc committees to address special issues, (12 members x $178/day x 4 meetings x 2 days/meeting = $17,088).

The total annual cost of the eight technical and regional advisory committees is estimated to be $136,704, assuming there are twelve members on each committee, and the committees meet four times per year for two days (12 members x $178/day x 4 meetings x 2 days/meeting x 8 committees = $136,704).

The continuation budget for the Division of Marine Fisheries includes $108,000 to fund expenses incurred by the commission and should be used to offset any costs associated with modifying the present structure of the commission. Therefore, the net increase in expenditures for the Marine Fisheries Commission is $114,384 each year ($85,680 + $136,704 - $108,000).

- Coastal Habitat Protection Plans *Effective July 1, 1998*

According to the divison, four marine biologists and an office assistant will be required to develop habitat protection plans as required by the bill. The additional staff will be primarily

responsible for preparing protection plans for critical fisheries habitats in cooperation with the Division of Water Quality and the Division of Coastal Management. The staff will also participate in the preparation of fisheries management plans with respect to habitat issues.

The total estimated budget requirements to implement the section on coastal habitat protection plans is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
(4) Marine Biologist II		165,380	170,767	176,501	182,605
Office Assistant IV		23,966	24,722	25,527	26,383
Total Salaries & Benefits *	-	189,347	195,489	202,028	208,988
Positions		5.0	5.0	5.0	5.0
Operating Expenses		105,500	88,000	88,000	88,000
Total Requirements	**$0**	**$294,847**	**$283,489**	**$290,028**	**$296,988**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Fisheries Management Plans *Effective July 1, 1998*

As written, the bill requires the Marine Fisheries Commission to establish a priority order and schedule for developing fisheries management plans (FMPs) for each of the state's commercially or recreationally significant coastal fisheries species or species groups. The division and the Moratorium Steering Committee, established by the General Assembly in 1994, have identified 31 species and species groups for which management plans are needed.

Staff for FMP Development

The estimated staff required to prepare and periodically update fisheries management plans for all 31 species or species groups, is based on the following assumptions (*italicized*) and information on the division's current workload capabilities:

1. *One full-time biologist is required to supervise on-going field data collection and analysis efforts to support the development of management plans for 4 species.* A total of 8 full-time biologists is required to prepare FMPs for 31 species and groups. Currently, the division has 7 full-time equivalent biologists assigned to the development of management plans; therefore, the division needs 1 additional biologist.
2. *Three full-time technicians are required to collect data to support 1 biologist.* A total of 24 technicians is needed to support 8 biologists. Currently, the division has 15 full-time equivalent technicians assigned to collect data for FMPs; therefore, the division needs 9 additional technicians.
3. *On average, at least three years of field data is necessary to develop a management plan for a single species or fisheries group.*

4. The division currently has sufficient data on 12 species groups to begin analyzing the information and writing management plans. The division also has sufficient baseline data on an additional 3 species groups to complete data collection, and begin data analysis and plan writing within two years. The division does not have any data on the remaining 16 significant species.
5. *The division will complete an average of 5 initial FMPs per year during the first 3 years of the program and an average of 3 initial FMPs per year over the next five years of the program.* Based on this time line, initial management plans for all 31 species will be completed within 8 years (see table below for estimated plan development schedule).
6. *The division will revise each FMP every three years* (see table below for estimated revision schedule).
7. *The initial preparation of a fisheries management plan will take approximately six to seven months to complete. Revision of an existing plan will take approximately three months to complete.* Plans involving several species or multiple fisheries are expected to take longer.
8. *One full-time biologist is capable of performing statistical analyses and writing plans for 2 species groups.* Therefore, it will take 3 full-time biologists to write and periodically revise management plans for 31 species.
9. Two full-time population dynamicists are required to conduct modeling of fishery stocks to determine the status of the stocks to support the development of 31 FMPs. The division currently employs 1 full-time population dynamicist; therefore, 1 additional dynamicist will be required.

Advisory Councils

The bill requires the Chair of the Marine Fisheries Commission to appoint an advisory council for each FMP being developed. The division expects input from each council to be required only during the period of time when the plan is actually being written or revised. Each council will comprise up to twelve members, and will likely need to hold six meetings during the initial development of a plan and three meetings to revise an existing plan.

The table below indicates the **anticipated** schedule (**the Marine Fisheries Commission is responsible for adopting a formal schedule**) for the initial development and revision of fisheries management plans over the next ten years, as well as the cost of the required advisory councils.

FMP Development Schedule and Advisory Councils										
	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
New FMP	5	5	5	3	3	3	3	4		
FMP Revision				5	5	5	8	8	8	11
Total Plans	5	5	5	8	8	8	11	12	8	11
Advisory Council Cost	$ 46,080	$ 46,080	$ 46,080	$ 43,008	$ 43,008	$ 43,008	$ 52,224	$ 61,440	$ 24,576	$ 33,792
Cost per Advisory Council										
New FMP (initial development)			$128/day x 12 members x 6 meetings/year				9,216			
Revised FMP (3 year update)			$128/day x 12 members x 2 meetings/year				3,072			

The total estimated budget requirements to implement the section on fisheries management plans is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Population Dynamicist		47,026	48,566	50,205	51,950
Marine Fisheries Biologist I		36,585	37,769	39,031	40,373
(3) Marine Fisheries Biologist II		124,035	128,075	132,376	136,954
(3) Marine Fisheries Technician II		80,355	82,910	85,630	88,525
(6) Marine Fisheries Technician III		179,826	185,586	191,717	198,244
Data Clerk Supervisor		25,830	26,649	27,521	28,450
Office Assistant IV		23,966	24,722	25,527	26,383
Total Salaries & Benefits *	-	517,623	534,278	552,006	570,878
Positions		16.0	16.0	16.0	16.0
Operating Expenses		692,780	502,412	502,412	502,412
Advisory Councils		46,080	46,080	46,080	43,008
Total Requirements	**$0**	**$1,256,483**	**$1,082,770**	**$1,100,498**	**$1,116,298**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Licensing Administration *Effective July 1, 1999*

The bill provides for the purchase and renewal of Standard Commercial Fishing Licenses, Recreational Commercial Gear Licenses, vessel endorsements, dealer and other licenses at the central and district offices of the Division of Marine Fisheries, by mail (applies to renewals only) or through designated license agents. Currently licenses are available only at the central office, located in Morehead City, and through authorized license agents. In addition to the office in Morehead City, the division maintains district offices in Wilmington, Washington, Columbia, Wanchese and Elizabeth City.

The division currently employs five full-time permanent and two part-time temporary staff persons to handle administration of the commercial licensing program. The current authorized

budget of the Licensing Section is $208,649, of which $88,059 is from General Fund appropriations, and $120,590 is from license receipts.

According to the Division of Marine Fisheries, an additional 13.25 full-time equivalent positions are required to implement the licensing provisions of this act. The new positions include a processing unit supervisor to oversee the day-to-day operations of the new licensing program, and to investigate and resolve problems or questions concerning licenses. An office assistant position is needed to provide clerical support to the unit supervisor and licensing staff in the district offices. The division also anticipates the need for 10.25 full-time equivalent processing assistants to handle licensing transactions. This number includes seven full-time and two part-time (1.25 full-time equivalents) positions to manage sales in the division's five district offices along the coast, one full-time position to process and track requests for renewals by mail, and one full-time position to oversee the newly created Recreational Commercial Gear License. The division plans to implement a more sophisticated licensing system by automating the current system, which relies heavily on hard copy paper flow and file maintenance, consolidating several existing data bases, and providing on-line access to historical license data and violation statistics. A computer services analyst position is proposed to maintain the new computer based licensing system.

Since the licensing requirements of this act are effective July 1, 1999, the division needs to complete the computer system and technology upgrades during the 1998-99 fiscal year to ensure the automated licensing system is in place and operational on July 1, 1999. The division also needs to phase in new staff during the 1998-99 fiscal year in order to have adequate time to hire and train personnel to be in place on July 1, 1999. The budget requirements reflected for licensing administration for the 1998-99 fiscal year assume funding for the positions will be effective January 1, 1998.

The total estimated budget requirements to implement the licensing section is outlined in the following table:

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Personnel					
Processing Unit Supervisor V		25,244	26,043	26,894	27,799
Office Assistant IV		23,966	24,722	25,527	26,383
(7.25)Processing Assistant III		159,068	164,048	169,349	174,993
(3) Processing Assistant IV		70,271	72,483	74,838	77,345
Computer Services Analyst		32,965	34,027	35,157	36,360
Total Salaries & Benefits *	-	155,757	321,324	331,765	342,880
Positions		13.25	13.25	13.25	13.25
Operating Expenses		386,734	189,867	189,867	189,867
Total Requirements	**$0**	**$542,491**	**$511,191**	**$521,632**	**$532,747**

**Salaries are adjusted to reflect the projected growth estimated for average hourly earnings in manufacturing. The inflation rates are based on forecasts by Data Resources, Inc.*

- Department of Correction and Judicial Department (Criminal and Civil Penalties)

Currently, the Judicial Department does not have an offense code relating to offenses outlined in G.S. 113-187 and G.S. 113-190. This indicates a small number of offenses since "offense codes" are established only when the number of offenses is significant. Based on this finding, the Sentencing Commission does not expect the proposed changes to have any significant impact on prison populations. The Sentencing Commission estimates, for example, that if 10 individuals are convicted of these offenses per year, approximately 1 or 2 additional inmates will be added to the prison population. If there are as many as 30 convictions, no more than 3 to 6 additional inmates will be added to the prison system. These few potential additional inmates can be absorbed within existing Department of Correction resources.

Likewise, there will not be a significant fiscal impact on the Judicial Branch, as no major changes are expected in the time required to process or dispose of these cases. The Judicial Department can absorb these potential few new cases within existing resources.

- Office of the State Auditor

The State Auditor estimates the cost of conducting a detailed operational review and performance audit of the Division of Marine Fisheries by February 1, 1998 will be $25,000.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Mona Moon, Richard Bostic and Charles Perusse
APPROVED BY: Tom Covington
DATE: July 28, 1997

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

July 31, 1997

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Johnny Gray	OSBM
Gordon S. Myers	NCDOT - Board Member
Juanita Sheares-Ewing	NCDOT Board Member
Jerry Schill	NC Fisheries Association
Myron Smith	Family & Friend of Commercial Fishermen 1724 Briarforest Lane 27615
Paul F. Cox	Triangle Area Hotel Motel Association
Franic Colonna	Triangle Rent A Car
Nancy Workman	Thrifty Car Rental
Danny Jernigan	Dollar - Rent A Car
Dan McLawhorn	Atty General's Office
	Attorney General's Office

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 31, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allen Jernigan	Attorney General's Office
Amy Gillespie	Attorney General's office
Matthew J. Morse	Office of Lt. Gov.
DAVID D. KING	DOT
DAVID HERLONG	State Planning
Mac Boxley	N.C. Aggregates Assoc.
Boyd Cauble	City of Charlotte
Frank Freeman	Gov.'s office
Heather Feild	OSA
Patti Seawell	NC DOR
George Long	"

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — July 31, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
VL McBride	NCA
Molly Diggins	NC Sierra Club
Jon R. Nordstrom	NC Marine Fisheries
Twila Nelson	MFC
Janice Fulcher	NFC
Jerri Fulcher	Stacy, NC
Dan Whittle	ENR
Robert Paschal	Young, Moore & Henderson, P.A.
Cam Cove	BPMHL
Jim Fobes	NCAFI
Gray Meyer	Moore & Van Allen

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

July 31, 1997

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
SAM JOHNSON	ATSL
BILL SCOGGIN	NCBA
Orville Powell	City of Durham, 101 City Hall Plaza 27701
Ian Duncan	NCSR/CCA
Dick Brame	CCA-NC
DOUG RADER	EDF
TOM BEAN	NC Wildlife Federation
BOB LUCAS	MFC
Fred Allen	NC Aggregates Assn
TANJA VUJIĆ	EDF
Sanford Cron	NCDOT

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

July 31, 1997

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Bevacqua	NCCBI
	NFCoun.
Reed Williams	NCMBA
Susan Valauri	Nationwide

Attachment # 3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, August 04, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE, AS AMENDED

H.B.(CS#2)**1231** Local Transit Revenue Options.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **841** Expand Subsidiary Dividend Deduction.
Draft Number: PCSX7847
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**39** Modify Setoff Debt Collection.
Draft Number: PCSX1854
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B.(CS #1)**886** Trucking Adjustment Act of 1997.
Draft Number: PCS2798
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1156** March of Dimes License Plates.
Draft Number: PCSX6313
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1)	**1097**	Fisheries Reform Act-2.	
		Draft Number:	PCSA410
		Sequential Referral:	Appropriations
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 6

Committee Clerk Comment: S 39 841 886 H 1097 1156 1231

SENATE FINANCE COMMITTEE

THURSDAY, JULY 31, 1997

15 MINUTES AFTER SESSION - ROOM 544 LOB

The Senate Finance Committee met after session on July 31st to continue the agenda from the 8:30 meeting. Senator Kerr presided and all 28 committee members were present.

H.B. 1231 - Local Transit Revenue Options

Allen Miles, representing the American Insurance Association and speaking for the other insurance industry representatives, spoke in opposition to the increase in rental car taxes in the bill.

Leslie Bevacqua, representing North Carolina Citizens for Business and Industry, spoke in opposition to the car rental tax, but supports other parts of the bill.

Frank Colonna, owner of Triangle Rent A Car, spoke in opposition to the increase in car rental tax but not opposed to a mass transit tax that is fair and equitable.

Franklin Freeman, representing Governor Hunt, spoke in support of this bill.

Carolyn Grant, representing the Raleigh Chamber of Commerce, spoke in support of this bill.

Senator Kerr recognized Tom Darden, CEO of Cherokee Sanford, from Goldsboro, and also Margaret Klutz from Salisbury and member of DOT Board.

Christie Barbee, Asphalt Pavement Association, spoke in support of this bill.

There was a general discussion on this bill with the committee members asking questions of the speakers and the bill sponsors and voicing their concerns.

Garland Garrett, Secretary of Transportation, was recognized and spoke in support of this bill and stated DOT would work closely with federal government to make sure North Carolina received all available federal funds.

Senator Gulley sent forth an amendment and moved for its adoption. The motion carried and the amendment was adopted by the committee. After more discussion on this bill, on motions by Senator Albertson, Senator Shaw and Senator Winner, the bill, as amended, was given a "favorable" report. Copy of bill, amendment, explanation, fiscal note and letter from City Attorney in Fayetteville included in the minutes.

H.B. 1156 - March of Dimes License Plates

This bill had previously been discussed in Senate Finance on July 30th and on motion by Senator Lee a committee substitute had been adopted. Senator Allran sent forth an amendment and on motion by Senator Perdue, the amendment was adopted by the committee. Senator Lee moved for a "favorable" report and the motion carried. Copy of bill, committee substitute, amendment, explanation and fiscal note included in the minutes.

S.B. 886 - Trucking Adjustment Act of 1997

Senator Larry Jordan was recognized to explain S.B. 886. A committee substitute had been adopted at a previous meeting. Senator Webster sent forth an amendment which was adopted by the committee on his motion. Ruth Sappie, DOT, was recognized to speak on the bill and said that DMV would enforce this law if it were passed. Virgil McBride, representing the North Carolina Trucking Association, spoke on the bill and stated they had some concerns regarding this bill. On motion by Senator Ballantine, this bill, as amended, was given a "favorable" report and will be rolled into a new committee substitute. Copy of bill, committee substitute, amendment and explanation included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

Attachment # 1

AGENDA

SENATE FINANCE COMMITTEE

THURSDAY, JULY 31, 1997

Room 544 - 8:30 A.M.

S.B. 39 - Modify Setoff Debt Collection - Sen. L. Shaw

S.B. 841 - Modify Corporate Dividend Taxation - Sen. Hoyle

H.B. 1097 - Fisheries Reform Act-2 - Rep. Preston

H.B. 1231 - Local Transit Revenue Options - Rep. Minor

TIME PERMITTING:

H.B. 1156 - March of Dimes/School Tech. Plates - Rep. Morris

S.B. 886 - Trucking Adjustment Act of 1997 - Sen. Jordan

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1231
Committee Substitute Favorable 6/23/97
Committee Substitute #2 Favorable 7/16/97

Short Title: Local Transit Revenue Options. (Public)

Sponsors:

Referred to:

May 19, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE SUPPLEMENTAL SOURCES OF REVENUE FOR LOCAL GOVERNMENT TRANSIT FINANCING.

The General Assembly of North Carolina enacts:

PART I. MECKLENBURG COUNTY SALES TAX

Section 1. (a) This section applies only to Mecklenburg County.

(b) Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 43.

"Local Government Sales and Use Taxes for Public Transportation.

"**§ 105-505. Short title; purpose.**

This Article is the Local Government Public Transportation Sales Tax Act and may be cited by that name. This Article gives the counties of this State an opportunity to obtain an additional source of revenue with which to meet their needs for financing local public transportation systems. It provides counties with authority to levy one-half percent (1/2%) sales and use taxes.

"**§ 105-506. Definitions.**

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

(1) Net proceeds. -- Gross proceeds less the cost of administering and collecting the tax.

(2) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

"**§ 105-507. Limitations.**

A county may not levy a tax under this Article unless the county or at least one unit of local government in the county operates a public transportation system. In addition, a county may not levy a tax under this Article unless it has developed a financial plan and distributed it to each unit of local government in the county that operates a local public transportation system. The financial plan must provide for equitable allocation of the net proceeds distributed to the county in consideration of the identified needs of local public transportation systems in the county, countywide human service transportation systems, and expansion of public transportation service to unserved areas in the county.

"**§ 105-508. Local election on adoption of sales and use tax.**

(a) Resolution. -- The board of commissioners of a county may direct the county board of elections to conduct an advisory referendum within the county on the question of whether a local sales and use tax at the rate of one-half percent (1/2%) may be levied in accordance with this Article. The election shall be held on a date jointly agreed upon by the boards and shall be held in accordance with the procedures of G.S. 163-287. The board of commissioners shall hold a public hearing on the question at least 30 days before the date the election is to be held.

(b) Ballot Question. -- The form of the question to be presented on a ballot for a special election concerning the levy of a tax authorized by this Article shall be:

'[ ] FOR [ ] AGAINST

One-half percent (1/2%) local sales and use taxes, in addition to the current two percent (2%) local sales and use taxes, to be used only for public transportation systems.'

"**§ 105-509. Levy and collection of sales and use tax.**

If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board of commissioners of the county may, by resolution, levy one-half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the

provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Article 43 of Chapter 105 of the General Statutes'.

A tax levied under this Article does not apply to the sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

"**§ 105-510. Distribution and use of taxes.**

(a) Distribution. -- The Secretary shall, on a quarterly basis, allocate to each taxing county the net proceeds of the tax levied under this Article by that county. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties, in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the quarterly distribution.

The Secretary shall distribute the net proceeds of the tax levied by a county on a per capita basis among the county and the units of local government in the county that operate public transportation systems. No proceeds shall be distributed to a county that does not operate a public transportation system or to a unit of local government that does not operate a public transportation system.

(b) Use. -- A county must allocate the net proceeds distributed to it in accordance with its financial plan adopted pursuant to G.S. 105-507 and use the net proceeds only for financing, constructing, operating, and maintaining local public transportation systems. Any other unit of local government may use the net proceeds distributed to it under this Article only for financing, constructing, operating, and maintaining local public transportation systems. Every unit of government shall use the net proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems."

PART II. MUNICIPAL VEHICLE REGISTRATION TAX

Section 2. G.S. 20-97 reads as rewritten:

"**§ 20-97. Taxes ~~compensatory; no additional tax.~~ credited to Highway Fund; municipal vehicle taxes.**

(a) State Taxes to Highway Fund. -- All taxes levied under ~~the provisions of~~ this Article are ~~intended as~~ compensatory taxes for the use and privileges of the public highways of this ~~State, and shall be paid by the Commissioner to the State Treasurer, to~~ State. The taxes collected shall be credited ~~by him to the State Highway Fund; and no~~ to the State Highway Fund. Except as provided in this section, no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the ~~State of North Carolina, except that cities~~ State.

(b) General Municipal Vehicle Tax. -- Cities and towns may levy a tax of not more than five dollars ($5.00) per year upon any vehicle resident ~~therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed~~ in the city or town. The proceeds of the tax may be used for any lawful purpose.

(c) Municipal Vehicle Tax for Public Transportation. -- A city or town that operates a public transportation system as defined in G.S. 105-506 may levy a tax of not more than five dollars ($5.00) per year upon any vehicle resident in the city or town. The tax authorized by this subsection is in addition to the tax authorized by subsection (b) of this section. A city or town may not levy a tax under this section, however, to the extent the rate of tax, when added to the general motor vehicle taxes levied by the city or town under subsection (b) of this section and under any local legislation, would exceed thirty dollars ($30.00) per year. The proceeds of the tax may be used only for financing, constructing, operating, and maintaining local public transportation systems. Cities and towns shall use the proceeds of the tax to supplement and not to supplant or replace existing funds or other resources for public transportation systems. This subsection does not apply to the City of Durham.

(d) Municipal Taxi Tax. -- Cities and towns may levy a tax of not more than fifteen dollars ($15.00) per year upon each vehicle operated in ~~such~~ the city or town as a taxicab. The proceeds of the tax may be used for any lawful purpose.

~~(a1) to (a5). Repealed by Session Laws 1983, c. 188, s. 2.~~

~~(b)~~ (e) No Additional Local Tax. -- No ~~additional franchise tax, license tax, or other fee shall be imposed by the State against any franchise motor vehicle carrier taxed under this Article nor shall any~~ county, city or town may impose a franchise ~~tax~~ tax, license tax, or other fee upon ~~them, except that cities and towns may levy a license tax not in excess of fifteen dollars ($15.00) per year on each vehicle operated in such city as a taxicab as provided in subsection (a) hereof.~~ a motor carrier unless the tax is authorized by this section.

~~(c) Repealed by Session Laws 1993, c. 321, s. 146.~~"

PART III. REGIONAL TRANSIT AUTHORITY VEHICLE RENTAL TAX

Section 3. Chapter 105 of the General Statutes is amended by adding a new Subchapter to read:

"SUBCHAPTER IX. MULTICOUNTY TAXES.

"ARTICLE 50.

"Regional Transit Authority Vehicle Rental Tax.

"**§ 105-550. Definitions.**

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

(1) Authority. -- A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes.

(2) Long-term lease or rental. -- Defined in G.S. 105-187.1.

(3) Motorcycle. -- Defined in G.S. 20-4.01.

(4) Private passenger vehicle. -- Defined in G.S. 20-4.01.

(5) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger

transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, car-pool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

(6) Short-term lease or rental. -- A lease or rental that is not a long-term lease or rental.

"**§ 105-551. Tax on gross receipts authorized.**

(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting private passenger vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes.

(b) Restrictions. -- The board of trustees of an Authority may not levy a tax under this section or increase the tax rate of a tax levied under this section until all of the following requirements have been met:

(1) The board of trustees has held a public hearing on the tax or the increase in the tax rate after giving at least 10 days' notice of the hearing.

(2) If the Authority has a special tax board, the special tax board has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(3) The board of commissioners of each county included in the territorial jurisdiction of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

"**§ 105-552. Collection and administration of gross receipts tax.**

(a) Effective Date. -- A tax or a tax increase levied under this Article becomes effective on the date set by the board of trustees in the resolution levying the tax or the tax increase. The effective date must be the first day of a month and may not be earlier than the first day of the second month after the board of trustees adopts the resolution.

(b) Collection. -- A tax levied by an Authority under this Article shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Article is to be added to the lease or rental price of a private passenger vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Article applies regardless of whether the retailer who leases or rents the private passenger vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under this Article must be paid to the Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the private passenger vehicle or motorcycle had elected to pay the optional gross receipts tax.

(c) Penalties and Remedies. -- The penalties and remedies that apply to local sales and use taxes levied under Subchapter VIII of this Chapter apply to a tax levied under this Article. The board of trustees of an Authority may exercise any power the Secretary of Revenue or a board of county commissioners may exercise in collecting local sales and use taxes.

"**§ 105-553. Exemptions and refunds.**

No exemptions are allowed from a tax levied under this Article. No refunds are allowed for a tax lawfully levied under this Article.

"**§ 105-554. Use of tax proceeds.**

An Authority that levies a tax under this Article may use the proceeds of the tax for any purpose for which the Authority is authorized to use funds. An Authority shall use the tax proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems. Authorized purposes for which an Authority may use funds include the following:

(1) Pledging funds in connection with the financing of a public transportation system or any part of a public transportation system.

(2) Paying a note, bond, or other obligation entered into by the Authority pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes.

"**§ 105-555. Repeal of tax or decrease in tax rate.**

The board of trustees of an Authority may repeal a tax levied under this Article or decrease the tax rate of a tax levied under this Article. The same restrictions that apply to the levy of a tax or an increase in a tax rate under this Article apply to the repeal of the tax or a decrease in the tax rate.

A tax repeal or a tax decrease becomes effective on the date set by the board of trustees in the resolution repealing or decreasing the tax. The effective date must be on the first day of a month and may not be earlier than the first day of the second month after the board of trustees adopts the resolution. Repeal or decrease of a tax levied under this Article does not affect the rights or liabilities of an Authority, a taxpayer, or another person arising before the repeal or decrease."

PART IV. REGIONAL TRANSPORTATION AUTHORITY REGISTRATION TAX

Section 4. Subchapter IX of Chapter 105 of the General Statutes, as enacted by this act, is amended by adding a new Article to read:

"ARTICLE 51.

"Regional Transit Authority Registration Tax.

"**§ 105-560. Definitions.**

(1) Authority. -- Any of the following:
a. A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes that includes two or more counties.
b. A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.
c. A regional transportation authority created pursuant to Article 27 of Chapter 160A of the General Statutes.
(2) Board of trustees. -- The governing body of an Authority.
(3) Public transportation system. -- Defined in G.S. 105-550.

"**§ 105-561. Authority registration tax authorized.**

(a) Tax Authorized. -- The board of trustees of an Authority may, by resolution, levy an annual license tax in accordance with this Article upon any motor vehicle with a tax situs within its territorial jurisdiction. The purpose of the tax levied under this Article is to raise revenue for capital and operating expenses of an Authority in providing public transportation systems. The rate of tax levied under this Article must be a full dollar amount, but may not exceed five dollars ($5.00) a year.

(b) Restrictions. -- The board of trustees of an Authority may not levy a tax under this Article or increase the tax rate until all of the following requirements have been met:

(1) The board of trustees has held a public hearing on the tax or the increase in the tax rate after giving at least 10 days' notice of the hearing.
(2) If the Authority has a special tax board, the special tax board has adopted a resolution approving the levy of the tax or the increase in the tax rate.
(3) Except where the levy or increase in tax is necessary for debt service on bonds or notes that each of the boards of county commissioners had previously approved under G.S. 159-51, the board of commissioners of each county included in the territorial jurisdiction of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(c) Resolutions. -- The board of trustees and the board of county commissioners, upon adoption of a resolution pursuant to this section, shall cause a certified copy of the resolution to be delivered immediately to the Authority and to the Division of Motor Vehicles.

"**§ 105-562. Collection and scope.**

(a) Collection. -- A tax or a tax increase levied under this Article becomes effective on the date set by the board of trustees in the resolution levying the tax or the tax increase. The effective date must be the first day of a month and may not be earlier than the first day of the third calendar month after the board of trustees adopts the resolution. To the extent the tax applies to vehicles whose tax situs is in a county the entire area of which is within the jurisdiction of the Authority, the Division of Motor Vehicles shall collect and administer the tax. To the extent the tax

applies to vehicles whose tax situs is in a county that is only partially within the jurisdiction of the county, the Authority shall collect and administer the tax. The Authority may contract with one or more local governments in its jurisdiction to collect the tax on its behalf.

Upon receipt of the resolutions under G.S. 105-561, the Division of Motor Vehicles shall proceed to collect and administer the tax as provided in this Article. The tax is due at the same time and subject to the same restrictions as in G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88. The Division of Motor Vehicles may adopt rules to carry out its responsibilities under this Article.

(b) Scope. -- Only vehicles required to pay a tax under G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88 shall be subject to the tax provided by this Article. Taxes shall be prorated in accordance with G.S. 20-95.

(c) Tax Situs. -- The tax situs of a motor vehicle for the purpose of this Article is its ad valorem tax situs. If the vehicle is exempt from ad valorem tax, its tax situs for the purpose of this Article is the ad valorem tax situs it would have if it were not exempt from ad valorem tax.

"**§ 105-563. Modification or repeal of tax.**

The Board of Trustees may, by resolution, repeal the levy of the tax under this Article or decrease the amount of the tax, under the same procedures and subject to the same limitations as provided in G.S. 105-561. A tax repeal or a tax decrease becomes effective on the date set by the board of trustees in the resolution repealing or decreasing the tax. The effective date must be on the first day of a month and may not be earlier than the first day of the third calendar month after the board of trustees adopts the resolution. Repeal or decrease of a tax levied under this Article does not affect the rights or liabilities of an Authority, a taxpayer, or another person arising before the repeal or decrease.

"**§ 105-564. Distribution and use of proceeds.**

The Authority shall retain the net proceeds of taxes it collects under this Article. Taxes collected by the Division of Motor Vehicles under this Article shall be credited to a special fund and the net proceeds disbursed quarterly to the appropriate Authority. Interest credited to the fund shall be disbursed quarterly to the Highway Fund to reimburse the Division of Motor Vehicles for the cost of collecting and administering the tax.

An Authority that levies a tax under this Article may use the proceeds of the tax for any purpose for which the Authority is authorized to use funds. An Authority shall use the tax proceeds to supplement and not to supplant or replace existing funds or other resources for public transportation systems."

Section 6. G.S. 160A-623 reads as rewritten:

"**§ 160A-623. Regional Transportation Authority registration tax.**

~~(a) Tax Authorized.~~ In accordance with ~~this section,~~ Article 51 of Chapter 105 of the General Statutes, an Authority organized under this Article may levy an annual license tax upon any motor vehicle with a tax situs within its territorial jurisdiction as defined by G.S. 160A-602. A tax levied under this section before the enactment of

Article 51 of Chapter 105 of the General Statutes is considered a tax levied under Article 51 of Chapter 105 of the General Statutes.

~~(b) Purpose. The purpose of the tax levied under this section is to raise revenue for capital and operating expenses of an Authority in providing a public transportation system.~~

~~(c) Amount of Tax. The annual levy under this section must be a full dollar amount, but may not exceed five dollars ($5.00) per year.~~

~~(d) Procedure for Levy. The Board of Trustees of an Authority may levy the tax provided by this section by passage of a resolution, after not less than 10 days' public notice and after a public hearing. Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the Board of Trustees in the resolution levying the tax, which shall in no case be earlier than the first day of the third calendar month after the adoption of the resolution. The Board of Trustees, upon adoption of the resolution, shall cause a certified copy of the resolution to be delivered immediately to the Division of Motor Vehicles.~~

~~(e) Collection of Tax. Upon receipt of the resolutions under subsections (d) and (j), the Division of Motor Vehicles shall proceed to collect and administer the tax. The tax is due at the same time and subject to the same restrictions as in G.S. 20-87 (1), (2), (4), (5), (6), and (7) and G.S. 20-88. The Commissioner of Motor Vehicles may adopt such rules as are necessary and proper to implement this section.~~

~~(f) Modification or Repeal of Tax. The Board of Trustees may, by resolution, terminate the levy of the tax under this section, or increase or decrease the amount of the tax, under the same procedures as provided in subsection (d) of this section, and subject to the limitations provided in subsections (e) and (j) of this section. Collection of the increased or decreased tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the Board of Trustees in the resolution increasing or reducing the tax, which shall in no case be earlier than the first day of the third calendar month after the adoption of the resolution. The effective date of the termination of the tax shall be only on and after the first day of a calendar month set by the Board of Trustees in the resolution terminating the tax, which shall in no case be earlier than the first day of the third calendar month after the adoption of the resolution. No liability for any tax levied under this section which shall have attached prior to the effective date on which a levy is terminated or reduced shall be discharged as a result of such termination or reduction, and no right to a refund of tax or otherwise, which shall have accrued prior to the effective date on which a levy is terminated or reduced shall be denied as a result of such termination.~~

~~(g) Vehicles Subject to Tax. Only vehicles required to pay a tax under G.S. 20-87(1), (2), (4), (5), (6), and (7) and G.S. 20-88 shall be subject to the tax provided by this section. Taxes shall be prorated in accordance with G.S. 20-95.~~

~~(h) Tax Situs. The tax situs of a motor vehicle for the purpose of this section is its ad valorem tax situs. If the vehicle is exempt from ad valorem tax, its tax situs for the purpose of this section is the ad valorem tax situs it would have if it were not exempt from ad valorem tax.~~

~~(i) Distribution of Proceeds. Taxes paid under this section shall be credited to a special fund, and the net proceeds disbursed quarterly to the appropriate Authority. Interest credited to the fund shall be disbursed quarterly to the Highway Fund to reimburse the Division of Motor Vehicles for the cost of collecting and administering the tax.~~

~~(i1) Repealed by Session Laws 1993, c. 382, s. 1.~~

~~(j) When Special Tax Board and Board of County Commissioners Authorization Necessary. No Authority may adopt a resolution to levy any tax under this section, or to increase the amount of the levy, unless the special tax board of that Authority and the board of county commissioners of each county organizing the Authority have first passed a resolution approving the levy or increase, except where the levy or increase in tax is necessary for debt service on bonds or notes that special tax board and each of the boards of county commissioners had previously approved under G.S. 159-51. The Special Tax Board and Board of County Commissioners, upon adoption of the resolution, shall cause a certified copy of the resolution to be delivered immediately to the Authority and to the Division of Motor Vehicles.~~"

PART V. EFFECTIVE DATES

Section 6. This act is effective when it becomes law.

Section 7. A tax levied under Article 43 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 43 of Chapter 105 of the General Statutes.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1231

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1231-ALCX-7/30

Date July 31 ,1997

Comm. Sub. [YES]
Amends Title []
Third Edition

Senator Gulley

moves to amend the bill on page 4, line 12,
by rewriting the line to read:
"public transportation systems.";

and on page 4, line 2,
by deleting the phrase "105-506" and substituting "105-550";

and on page 8, line 38,
by renumbering Section 6 as Section 5.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

EXPLANATION OF HOUSE BILL 1231:
Local Transit Revenue Options (3rd Edition)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: July 30, 1997
SPONSOR: Representative Miner

This bill provides local governments with revenue options to finance local public transportation systems, as follows:

1. It authorizes Mecklenburg county to levy a ½ cent local sales tax if approved by the voters of the county.
2. It authorizes cities that have public transportation systems, other than the city of Durham, to levy an additional $5 motor vehicle tax.
3. It authorizes regional public transportation authorities to levy a gross receipts tax of up to 5% on short-term motor vehicle rentals.
4. It authorizes the proposed Triad regional transportation authority to levy the same $5 vehicle registration tax that the existing Triangle regional public transportation authority levies. It also authorizes public transportation authorities organized under existing law and comprised of two or more counties to levy this same $5 vehicle registration tax.

A regional public transportation authority is an entity created by three counties under Article 26 of Chapter 160A of the General Statutes to provide a public transportation system for the region. The authority is governed by a board of trustees appointed by the counties creating the authority and larger cities within the counties. Currently, there is only one regional transportation authority, the Triangle Transit Authority for Wake, Durham, and Orange Counties. A second regional transportation authority is proposed in House Bill 993, which has passed the House and is in Senate Finance. This authority would be created under Article 27 of Chapter 160A of the General Statutes by the four largest cities of the five counties served by the authority, in order to promote the development of sound transportation systems in the area served by the authority. The authority would be governed by a board of trustees consisting of the mayors of the four largest cities and the chair of each Metropolitan Planning Organization in the area.

A public transportation authority is an entity created by one or more local government entities under Article 25 of Chapter 160A to provide public transportation. There are three multi-county public transportation authorities.

A public transportation system is defined broadly in the bill to include any combination of real and personal property established for purposes of public transportation. It does not include, however, streets, roads, and highways not dedicated to public transportation or related parking.

Section 1 of the bill authorizes Mecklenburg County to levy a ½ cent sales tax only if the tax is approved by the voters of the county. The proceeds of the tax must be used to finance, construct, operate, and maintain local public transportation systems. The tax does not apply to food. In other respects, it will be administered in the same way as the existing local sales and use taxes.

The county may not levy the sales tax unless it has developed a financial plan for equitable allocation of the proceeds it receives based on the identified needs of local public transportation systems in the county and planned expansion of public transportation to unserved areas. The sales tax authorized for Mecklenburg County will be distributed between the county and other local government units in the county that operate local public transportation systems, on a per capita basis. The county must allocate the tax proceeds it receives based on its financial plan.

Section 2 of the bill authorizes municipalities that operate public transportation systems, other than the City of Durham, to levy an additional $5 motor vehicle tax, to be used only to finance, construct, operate, and maintain local public transportation systems. Current law already authorizes municipalities to levy a $5 annual motor vehicle tax. Many municipalities already have local legislation authorizing them to levy an increased amount. Section 2 adds an extra authorization for $5 more. If that $5 would cause the municipality's total local motor vehicle tax to exceed $30, however, the additional $5 tax may not be levied. The City of Charlotte and the Town of Matthews are authorized by local act to levy annual motor vehicle taxes of $30. These local units are the only ones that would currently be affected by this limitation.

Section 3 of the bill authorizes a regional public transportation authority to levy a gross receipts tax of up to 5% on retailers within the region engaged in the business of renting private passenger motor vehicles and motorcycles. The tax applies to short-term rentals only. The tax will be collected by the authority but is otherwise administered in the same way as the optional highway use tax on gross receipts from vehicle rentals. This optional highway use tax is 8% on short-term rentals, so the combined tax within the jurisdiction of the authority

would be 13%. Each authority may use the proceeds of the tax for its public transportation purposes. Before levying or increasing the tax, the authority must obtain approval from each county in the region.

Sections 4 and 5 of the bill authorize the proposed Triad regional transportation authority and any multi-county public transportation authorities organized under current law to levy a $5 vehicle registration tax identical to the tax already authorized for, and levied by, the existing Triangle Transit Authority. The authority must obtain the approval of each county within its jurisdiction before it can levy the tax. The Division of Motor Vehicles will collect the tax in counties that are entirely located within the authority's jurisdiction. If the authority's jurisdiction includes just a part of one or more county, the authority will collect the registration tax in those parts of counties. The authority may contract with local governments to collect this tax. Authorization for authorities to levy this tax is organized into a new Article in Chapter 105 of the General Statutes; accordingly, the Triangle Transit Authority's tax is recodified from Chapter 160A to the new Article in Chapter 105.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1231
SHORT TITLE: Local Transit Revenue Options
SPONSOR(S): Proposed Committee Substitute

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
LOCAL REVENUES					
½ Sales Tax	$21.8	$46.2	$48.9	$51.8	$54.9
Registration $5.00					
Triad TA	$ 2.30	$ 4.70	$ 4.80	$ 4.9	$ 5.0
Choanoke TA	.24	.49	.50	.51	.52
Kerr TA	.38	.79	.80	.81	.82
Inter-Co. TA	.17	.36	.37	.38	.39
License $5.00					
Triangle TA Cities	$ 1.3	$ 2.6	$ 2.7	$ 2.7	$ 2.8
Triad TA Cities	1.5	3.3	3.4	3.5	3.6
Gross Receipts 5%					
Triangle TA	3.3	6.6	6.7	6.8	7.0
Triad TA	1.3	2.6	2.7	2.8	2.9

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Charlotte Transportation System, Triangle Transportation Authority, Regional Transportation Authority, Choanoke Public Transportation Authority, Kerr Area Transportation Authority, Inter-County Public Transportation Authority; Any municipality having a public transportation system.

EFFECTIVE DATE: When it becomes law

BILL SUMMARY: The proposed act allows for the implementation of several revenue sources for the funding of public transportation services in qualified counties and cities of the State. Each local funding option authorized by this act is subject to the approval of the county board of commissioners or the city council except for the local option sales tax which is subject to a vote of the qualified voters of the county.

Funding option: ½ cent sales tax

Mecklenburg County is authorized to levy a one half cent sales and use tax. The proceeds are to be used for financing the construction and maintenance of a public transportation system as defined in G.S. 105-506(2) of the act.

Funding option: municipal vehicle tax
The act authorizes any municipality in the State, that has a public transportation system, to levy a $5.00 municipal vehicle tax for public transportation. The tax is levied on motor vehicles sited in the municipality for property tax purposes. This tax is in addition to the general municipal vehicle tax authorized under G.S. 20-97.

Funding option: gross receipts
Counties that form a transportation authority under Article 26 or 27 of Chapter 160A of the General Statutes are authorized to impose a 5% vehicle rental tax on the short term lease of motor vehicles leased in the region. The Triangle Transit Authority would be eligible to levy this tax. The Triad Transit Authority will be eligible if it is organized under Article 27 of Chapter 160A, which is created in House Bill 993. (HB 993 has passed the House and is in Senate Finance.) See addendum I for a list of the counties that make-up the authorities.

This bill does not limit other counties from organizing a transit authority under either of these articles and imposing this tax. The revenue from the tax is to be used by an authority for any authorized purpose.

Funding option: vehicle registration
Transit authorities organized under Article 25, Article 26, and Article 27 of Chapter 160A of the General Statutes, are allowed to charge a $5.00 registration fee on motor vehicles sited in each member county for property taxation. This is the same authorization given to the Triangle Transit Authority.

ASSUMPTIONS AND METHODOLOGY:
The increase in the sales tax for Mecklenburg County is based on the most recient prediction of the General Fund financial model for a statewide increase in the local sales and use tax by county. The expected growth in sales tax collections for Mecklenburg County is 6% a year for fiscal years 1997-98 through 1999-00 and 5.9% for each additional year.

The revenue estimates from a $5.00 increase in the registration fee are based on vehicle registrations by county as of July 25, 1997. The estimates on the $5.00 local vehicle license are based on vehicle registrations by municipality as of July 25, 1997. Both the registration and municipal license revenues are expected to grow at the same rate as the statewide population. The expected statewide growth in population is 1.5% a year over the next five years.

The revenue associated with the 5% vehicle rental tax is based on a percentage of the 8% gross receipts tax on short term rentals. The percentages are based on the value of vehicles in counties having a major airport. Of the $374.7 million in value identified throughout the State, it is estimated that Wake has 37% of the revenue, Guilford has 11%, and Forsyth has 2%. If an 8% tax on the gross receipts of the short term lease of motor vehicles produces $29 million in revenue, a 5% tax on the same revenue would produce $18.0 million statewide. To derive the tax receipts by individual county, the percentages for Wake, Guilford, and Forsyth Counties were applied to the $18 million. The expected growth is 1.5% on average over the next five years.

In the first fiscal year the expected revenues are based on a six month collection period.

Sources:
General Fund Financial Model
N.C. Department of Motor Vehicles
Property Tax Administrators for Select Counties

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk
APPROVED BY:
DATE: July 28, 1997

Addendum I

PUBLIC TRANSPORTATION AUTHORITIES BY ARTICLE

Article 25, Chapter 160A
CHOANOKE PUBLIC TRANSPORTATION AUTHORITY
- Bertie County
- Halifax County
- Hertford County
- Northampton County

KERR AREA TRANSPORTATION AUTHORITY
- Franklin County
- Granville County
- Person County
- Vance County
- Warren County

INTER-COUNTY PUBLIC TRANSPORTATION AUTHORITY
- Camden County
- Chowan County
- Currituck County
- Pasquotank County
- Perquimans County

Article 26, Chapter 160A
RESEARCH TRIANGLE REGIONAL PUBLIC TRANSPORTATION AUTHORITY
- Durham County
- Orange County
- Wake County

Article 27, Chapter 160A - House Bill 993
TRIAD TRANSIT AUTHORITY
- Alamance County
- Davidson County
- Forsyth County
- Guilford County
- Randolph County

Fayetteville
North Carolina
CITY ATTORNEY

FAX TRANSMITTAL

DATE: July 31, 1997

TO: Senator Larry Shaw
Rep. Mary McAllister FAX #

FROM: Robert C. Cogswell, Jr.
City Attorney
PHONE #: (910) 433-1985
FAX #: (910) 433-1980

RE: Transit Funding-HB 1231

NUMBER OF PAGES TO BE TRANSMITTED: 2
(Including Transmittal Sheet)

MESSAGE:

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0129.7

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FAYETTEVILLE, NC 28302-1513
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FAX (910) 433-1980
An Equal Opportunity, Affirmative Action Employer

Fayetteville
North Carolina
CITY ATTORNEY

July 31, 1997

FACSIMILE TRANSMISSION

Senator Anthony E. Rand
North carolina Senate
Legislative Office Building, Room 300-C
Raleigh, N.C. 27601-2808

Re: HB 1231-Local Transit Revenue Options

Dear Senator Rand:

As you know, alternative sources of revenue are key to the continued vitality of public transportation in the Fayetteville and Cumberland County environs. Accordingly, your support for HB 1231 is very important. I understand it may be considered by the Senate Finance Committee today. Please call me if you have any questions.

Sincerely yours,

Robert C. Cogswell, Jr.
City Attorney

cc: Members, Cumberland County Delegation
Mayor & Members, Fayetteville City Council
Interim City Manager
Transit Director
Andy Romanet, NCLM

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 1156
Committee Substitute Favorable 5/21/97

Short Title: March of Dimes License Plates. (Public)

Sponsors:

Referred to:

April 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO DEVELOP A SPECIAL REGISTRATION PLATE FOR SUPPORTERS OF THE MARCH OF DIMES AND TO PROVIDE THAT A PORTION OF THE MONEY GENERATED FROM THE SPECIAL PLATES WILL BE GIVEN TO THE MARCH OF DIMES BIRTH DEFECTS FOUNDATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(14a) March of Dimes. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the March of Dimes Foundation."

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00

Olympic Games	$25.00
Special Olympics	$25.00
March of Dimes	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
All Other Special Plates	$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b5) March of Dimes Plates. -- The Division must receive 300 or more applications for a March of Dimes plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of March of Dimes plates to the March of Dimes Birth Defects Foundation for use in programs in North Carolina."

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1156
Committee Substitute Favorable 5/21/97
Proposed Senate Committee Substitute H1156-PCSX7363

Short Title: March of Dimes/School Tech. Plates. (Public)

Sponsors:

Referred to:

April 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEVELOPMENT OF A SPECIAL REGISTRATION PLATE FOR SUPPORTERS OF THE MARCH OF DIMES AND TO PROVIDE THAT A PORTION OF THE MONEY GENERATED FROM THE SPECIAL PLATE WILL BE DISTRIBUTED TO THE EASTERN CAROLINA CHAPTER OF THE MARCH OF DIMES BIRTH DEFECTS FOUNDATION AND TO AUTHORIZE THE DEVELOPMENT OF A SPECIAL PLATE FOR SUPPORTERS OF SCHOOL TECHNOLOGY AND TO PROVIDE THAT A PORTION OF THE MONEY GENERATED FROM THE SPECIAL PLATE WILL BE CREDITED TO THE STATE SCHOOL TECHNOLOGY FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(14a) March of Dimes. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the March of Dimes Foundation."

Section 2. G.S. 20-79.4(b) is amended by adding a new subdivision, to be inserted by the Revisor of Statutes in the appropriate alphabetical place, to read:

"( ) School Technology. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may

bear a phrase or an insignia representing the public school system in North Carolina."

Section 3. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
March of Dimes	$20.00
School Technology	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
All Other Special Plates	$10.00."

Section 4. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
School Technology	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 5. G.S. 20-81.12 is amended by adding two new subsections to read:

"(b5) March of Dimes Plates. -- The Division must receive 300 or more applications for a March of Dimes plate before the plate may be developed. The

Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of March of Dimes plates to the Eastern Carolina Chapter of the March of Dimes Birth Defects Foundation. The Eastern Carolina Chapter shall disperse the revenue proportionately among the Eastern Carolina Chapter, the Western Carolina Chapter, the Greater Triad Chapter, and the Greater Piedmont Chapter of the March of Dimes Birth Defects Foundation based upon the population of the area each Chapter represents. The money must be used for the prevention of birth defects through local community services and educational programs and through research and development.

(b6) School Technology Plates. -- The Division must receive 300 or more applications for a School Technology plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of School Technology plates to the State School Technology Fund, which is established under G.S. 115C-102.6D."

Section 6. G.S. 115C-102.6D(a) reads as rewritten:

"(a) There is established under the control and direction of the State Board of Education the State School Technology Fund. This fund shall be a nonreverting special revenue fund consisting of any monies appropriated to it by the General ~~Assembly.~~ Assembly and any monies credited to it under G.S. 20-81.12 from the sale of School Technology special license plates."

Section 7. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1156

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1156-ARB-7/30

Date_____,1995

Comm. Sub. [YES]
Amends Title [YES]
H1156-PCSX7363

Senator _____

moves to amend the bill on page 1, line 7, by deleting the word "FOUNDATION AND" and substituting "FOUNDATION,";

and on page 1, line 11, by deleting "FUND." and substituting "FUND, AND TO AUTHORIZE THE DEVELOPMENT OF A SPECIAL REGISTRATION PLATE FOR WAR VETERANS.";

and on page 2, lines 2 and 3, by inserting a new section between those lines to read:

"Section 3. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

'(28a) War Veteran. -- Issuable to a veteran of the armed forces of the United States who served in active federal service during a period of war and who was separated from the armed forces under conditions other than dishonorable. The Division may not issue the plate authorized by this subdivision for a period of war unless it receives at least 300 applications for a plate for that period. A 'period of war' is any of the following:

a. World War I, which began April 16, 1917, and ended November 11, 1918.
b. World War II, which began December 7, 1941, and ended December 31, 1946.
c. The Korean Conflict, which began June 27, 1950, and ended January 31, 1955.
d. The Vietnam Era, which began August 5, 1964, and ended May 7, 1975.
e. The Persian Gulf War.
f. Any other campaign, expedition, or engagement for which the United States

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1156

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1156-ARB-7/30 Page 2 of __

Department of Defense authorizes a campaign badge or medal.'";

and by renumbering the remaining sections accordingly;

and on page 3, line 21, by rewriting the line to read:
"Section 8. S.L. 1997-339 is repealed.
Section 9. This act is effective when it becomes law.";

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1156
Committee Substitute Favorable 5/21/97
Proposed Senate Committee Substitute H1156-PCSX6313

Short Title: March of Dimes/School Tech. Plates. (Public)

Sponsors:

Referred to:

April 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEVELOPMENT OF A SPECIAL REGISTRATION PLATE FOR SUPPORTERS OF THE MARCH OF DIMES AND TO PROVIDE THAT A PORTION OF THE MONEY GENERATED FROM THE SPECIAL PLATE WILL BE DISTRIBUTED TO THE EASTERN CAROLINA CHAPTER OF THE MARCH OF DIMES BIRTH DEFECTS FOUNDATION, TO AUTHORIZE THE DEVELOPMENT OF A SPECIAL PLATE FOR SUPPORTERS OF SCHOOL TECHNOLOGY AND TO PROVIDE THAT A PORTION OF THE MONEY GENERATED FROM THE SPECIAL PLATE WILL BE CREDITED TO THE STATE SCHOOL TECHNOLOGY FUND, AND TO AUTHORIZE THE DEVELOPMENT OF A SPECIAL REGISTRATION PLATE FOR WAR VETERANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(14a) March of Dimes. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the March of Dimes Foundation."

Section 2. G.S. 20-79.4(b) is amended by adding a new subdivision, to be inserted by the Revisor of Statutes in the appropriate alphabetical place, to read:

"( ) School Technology. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the public school system in North Carolina."

Section 3. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(28a) War Veteran. -- Issuable to a veteran of the armed forces of the United States who served in active federal service during a period of war and who was separated from the armed forces under conditions other than dishonorable. The Division may not issue the plate authorized by this subdivision for a period of war unless it receives at least 300 applications for a plate for that period. A 'period of war' is any of the following:

a. World War I, which began April 16, 1917, and ended November 11, 1918.
b. World War II, which began December 7, 1941, and ended December 31, 1946.
c. The Korean Conflict, which began June 27, 1950, and ended January 31, 1955.
d. The Vietnam Era, which began August 5, 1964, and ended May 7, 1975.
e. The Persian Gulf War.
f. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal."

Section 4. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
March of Dimes	$20.00
School Technology	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
All Other Special Plates	$10.00."

Section 5. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
School Technology	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 6. G.S. 20-81.12 is amended by adding two new subsections to read:

"(b5) March of Dimes Plates. -- The Division must receive 300 or more applications for a March of Dimes plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of March of Dimes plates to the Eastern Carolina Chapter of the March of Dimes Birth Defects Foundation. The Eastern Carolina Chapter shall disperse the revenue proportionately among the Eastern Carolina Chapter, the Western Carolina Chapter, the Greater Triad Chapter, and the Greater Piedmont Chapter of the March of Dimes Birth Defects Foundation based upon the population of the area each Chapter represents. The money must be used for the prevention of birth defects through local community services and educational programs and through research and development.

(b6) School Technology Plates. -- The Division must receive 300 or more applications for a School Technology plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of School Technology plates to the State School Technology Fund, which is established under G.S. 115C-102.6D."

Section 7. G.S. 115C-102.6D(a) reads as rewritten:

"(a) There is established under the control and direction of the State Board of Education the State School Technology Fund. This fund shall be a nonreverting special revenue fund consisting of any monies appropriated to it by the General ~~Assembly.~~ Assembly and any monies credited to it under G.S. 20-81.12 from the sale of School Technology special license plates."

Section 8. S.L. 1997-339 is repealed.

Section 9. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1156:
March of Dimes/School Technology Plates (PCS)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 30, 1997
SPONSOR: Representative Morris

The proposed committee substitute for **House Bill 1156** would authorize the Division of Motor Vehicles to develop two new special license plates: a March of Dimes special registration plate and a School Technology special registration plate. The Division would have to receive at least 300 applications for a special plate before it could be issued. The cost of the plates would be the regular registration fee plus an additional $20. The first $10 of the additional fee would be credited to the Special Registration Plate Fund. The remaining $10 of the additional fee would be credited to the Collegiate and Cultural Attraction Plate Account and transferred quarterly to the March of Dimes Birth Defects Foundation and the State School Technology Fund respectively.

The March of Dimes Birth Defects Foundation is incorporated in New York. There is a registered agent for the Foundation in North Carolina and four local chapters: the Eastern Carolina Chapter, the Western Carolina Chapter, the Greater Triad Chapter, and the Greater Piedmont Chapter. The chapters have decided that the Eastern Carolina Chapter will be the local group to receive the quarterly disbursement of revenue generated from the sale of the March of Dimes special license plate. The Eastern Carolina Chapter will distribute the funds proportionately among the four chapters located in North Carolina based upon the population of the area each chapter represents. The chapters use the money they receive to fight birth defects through educational programs and through research and development.

The General Assembly created the State School Technology Fund in 1994 to help local school administrative units implement their technology plans. The Commission on School Technology develops a State school technology plan and each local board of education develops a local school system technology plan that meets the requirements of the State plan. After a local school's plan is approved by the State Board of Education, it may use funds in the State School Technology Fund that are allocated to the local school administrative unit to implement its plan. The purpose of the technology plan is to improve student performance through the use of learning and instructional management technologies. The money generated from the sale of the School Technology special license plates will help increase the money available to local school administrative units for their technology needs.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1156 (Second Edition)

SHORT TITLE: March of Dimes License Plates

SPONSOR(S): Representative Morris

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Highway Fund - Special Registration Plate Acct.	$3,000	$3,000	$3,000	$3,000	$3,000
Collegiate and Cultural Attraction Plate Acct.	$3,000	$3,000	$3,000	$3,000	$3,000
EXPENDITURES					
Highway Fund - Special Registration Plate Acct.	$835	-	-	-	-

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation - Division of Motor Vehicles

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: The bill authorizes the Division of Motor Vehicles (DMV) to issue a special registration plate to supporters of the March of Dimes if at least 300 applications for such plate are received.

ASSUMPTIONS AND METHODOLOGY:
This fiscal note assumes the issuance of the minimum 300 license plates in FY 1997-98 and renewal of those plates in the following years. There is a one-time cost of $100 to design the new plate and a one-time production cost of $2.45 per plate. For 300 plates, the total production cost of $835 is paid from the Special Registration Plate Account. In addition to the normal $20 registration fee every license holder pays, there is an additional $20 annual fee for each March of

Dimes plate. $10 of the fee will be deposited into the Collegiate and Cultural Attractions Plate Account to be transferred quarterly to the March of Dimes Birth Defects Foundation for use in programs in North Carolina. The other $10 will go into the Special Registration Plate Account. It is assumed that all persons applying for the March of Dimes plate currently have a regular plate that will be turned in to DMV upon receipt of the new plate.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: July 25, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 886*
Transportation Committee Substitute Adopted 7/14/97

Short Title: Trucking Adjustment Act of 1997. (Public)

Sponsors:

Referred to: Finance.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE FOR A STUDY OF CERTAIN TRUCKING RELATED PROVISIONS BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-88 is amended by adding a new subsection to read:

"(l) The Division shall issue permanent truck and truck-tractor plates and shall include the word 'permanent' on the plate."

Section 2. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution.

b. Meats or agricultural crop products originating from a farm to first market.

c. ~~Unprocessed forest~~ Forest products originating from a farm or from woodlands to first market.

d. Livestock or poultry from their point of origin to first market.

e. Livestock by-products or poultry by-products from their point of origin to a rendering plant.

f. Recyclable material from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms 'recyclable' and 'processing' have the same meaning as in G.S. 130A-290(a).

g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term 'garbage' does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5."

Section 3. G.S. 20-116(d) reads as rewritten:

"(d) A single vehicle having two or more axles shall not exceed ~~35 feet in length~~ the following lengths of extreme overall dimensions inclusive of front and rear ~~bumpers.~~ bumpers:

Axles	Length
2	35 feet
3	40 feet
4 or more	45 feet

Provided, however, a bus or motor home with two axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers. ~~A single vehicle having three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers.~~ Provided, further, trucks transporting unprocessed cotton from farm to gin shall not exceed 48 feet in length overall of dimensions inclusive of front and rear bumpers. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes."

Section 4. G.S. 20-382.2 reads as rewritten:

"§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.

(a) Acts. -- A motor carrier who does any of the following is subject to a civil penalty of ~~seventy-five dollars ($75.00).~~ one thousand dollars ($1,000):

(1) Operates a for-hire motor vehicle in this State without registering its operations, as required by this Part.

(2) Operates a for-hire motor vehicle in interstate commerce in this State that does not carry a copy of either an insurance registration receipt issued to the motor carrier or a cab card with an

identification stamp issued for the vehicle, as required by G.S. 20-382.

(3) Operates a for-hire motor vehicle in intrastate commerce in this State for which it has not verified it has insurance, as required by G.S. 20-382.1.

(b) Payment. -- When the Division finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Division for a hearing.

(c) Hearing. -- Upon receiving a request for a hearing, the Commissioner ~~must~~ shall schedule a hearing within 30 days after receipt of the request. If after the hearing the Commissioner determines that the motor carrier was not liable for the penalty, the amount collected ~~must~~ shall be refunded. If after the hearing the Commissioner determines that the motor carrier was liable for the penalty, the motor carrier may bring an action in the Superior Court of Wake County against the Division for refund of the penalty. A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty.

(d) Proceeds. -- A penalty imposed under this section is payable to the Division. Penalties collected under this section shall be credited to the Highway Fund as nontax revenue."

Section 5. The Division of Motor Vehicles shall study the feasibility of establishing a staggered registration system for commercial motor vehicles under the International Registration Plan (IRP). The registration plan shall be coordinated with other states which currently stagger IRP registrations to eliminate, insofar as possible, multiple application dates for the same carrier. The registration plan shall provide for a smooth transition to the staggered system providing for credits and partial fees, as needed. The Division shall report the results of this study along with any legislation to implement the staggered registration system to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division by April 1, 1998.

Section 6. The Legislative Research Commission may study the following issues encouraging the growth of the trucking industry in North Carolina through increased truck registrations:

(1) The feasibility of removing the highway use tax on vehicles with a gross weight rating of more than 26,000 pounds;

(2) The replacement of the revenue from the removal of the highway use tax studied in subdivision (1) of this section by an increase in registration fees for the same vehicles by ten cents (10¢) per one hundred pounds of registered weight; and

(3) Eliminate the stacking of overweight penalties by restricting the penalties so that they do not exceed the highest axle-group weight that exceeds the allowable limits rather than assessing separate penalties for each axle-group and stacking those penalties for the same weight violations.

The Legislative Research Commission may make an interim report of the study authorized by this section to the 1998 Session of the General Assembly and may make a final report to the 1999 Session of the General Assembly.

Section 7. Sections 5, 6, and 7 of this act are effective when this act becomes law. Sections 1 through 4 of this act become effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 886*
Transportation Committee Substitute Adopted 7/14/97
Proposed Committee Substitute S886-PCS2788

Short Title: Trucking Adjustment Act of 1997. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE FOR A STUDY OF CERTAIN TRUCKING RELATED PROVISIONS BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-88 is amended by adding a new subsection to read:

"(l) The Division shall issue permanent truck and truck-tractor plates to Class A and Class B Motor Vehicles and shall include the word 'permanent' on the plate. The permanent registration plates issued pursuant to this section shall be subject to annual registration fees set in this section. The Division shall issue the necessary rules providing for the recall, transfer, exchange, or cancellation of permanent plates issued pursuant to this section."

Section 2. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution.
b. Meats or agricultural crop products originating from a farm to first market.
c. ~~Unprocessed forest~~ Forest products originating from a farm or from woodlands to first market.
d. Livestock or poultry from their point of origin to first market.
e. Livestock by-products or poultry by-products from their point of origin to a rendering plant.
f. Recyclable material from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms 'recyclable' and 'processing' have the same meaning as in G.S. 130A-290(a).
g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term 'garbage' does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5."

Section 3. G.S. 20-382.2 reads as rewritten:

"**§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.**

(a) Acts. -- A motor carrier who does any of the following is subject to a civil penalty of ~~seventy-five dollars ($75.00).~~ one thousand dollars ($1,000):

(1) Operates a for-hire motor vehicle in this State without registering its operations, as required by this Part.
(2) Operates a for-hire motor vehicle in interstate commerce in this State that does not carry a copy of either an insurance registration receipt issued to the motor carrier or a cab card with an identification stamp issued for the vehicle, as required by G.S. 20-382.
(3) Operates a for-hire motor vehicle in intrastate commerce in this State for which it has not verified it has insurance, as required by G.S. 20-382.1.

(b) Payment. -- When the Division finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not

jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Division for a hearing.

(c) Hearing. -- Upon receiving a request for a hearing, the Commissioner ~~must~~ shall schedule a hearing within 30 days after receipt of the request. If after the hearing the Commissioner determines that the motor carrier was not liable for the penalty, the amount collected ~~must~~ shall be refunded. If after the hearing the Commissioner determines that the motor carrier was liable for the penalty, the motor carrier may bring an action in the Superior Court of Wake County against the Division for refund of the penalty. A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty.

(d) Proceeds. -- A penalty imposed under this section is payable to the Division. Penalties collected under this section shall be credited to the Highway Fund as nontax revenue."

Section 4. The Division of Motor Vehicles shall study the feasibility of establishing a staggered registration system for commercial motor vehicles under the International Registration Plan (IRP). The registration plan shall be coordinated with other states which currently stagger IRP registrations to eliminate, insofar as possible, multiple application dates for the same carrier. The registration plan shall provide for a smooth transition to the staggered system providing for credits and partial fees, as needed. The Division shall report the results of this study along with any legislation to implement the staggered registration system to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division by April 1, 1998.

Section 5. The Joint Legislative Transportation Oversight Committee and the Revenue Laws Study Committee shall study the following issues encouraging the growth of the trucking industry in North Carolina through increased truck registrations:

(1) The feasibility of removing the highway use tax on vehicles with a gross weight rating of more than 26,000 pounds;

(2) The replacement of the revenue from the removal of the highway use tax studied in subdivision (1) of this section by an increase in registration fees for the same vehicles by ten cents (10¢) per 100 pounds of registered weight; and

(3) Eliminate the stacking of overweight penalties by restricting the penalties so that they do not exceed the highest axle-group weight that exceeds the allowable limits rather than assessing separate penalties for each axle-group and stacking those penalties for the same weight violations.

The Joint Legislative Transportation Oversight Committee may make an interim report of the study authorized by this section to the 1998 Session of the General Assembly and shall make a final report to the 1999 Session of the General Assembly.

Section 6. Sections 4 and 5 of this act are effective when this act becomes law. Sections 2 and 3 of this act become effective October 1, 1997. Section 1 of this act becomes effective January 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 886

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S886-ARB-7/30

Date 7-31 ,1997

Comm. Sub. [YES]
Amends Title []
S886-PCS2788

Senator Webster

moves to amend the bill on page 1, line 13, by deleting the word "issue" and substituting the word "adopt";

and on page 2, lines 1, 8, 10, and 12 by inserting the word "transported" before the word "from";

and on page 2, lines 4 and 6, by deleting "originating" and substituting "~~originating~~ transported";

and on page 2, line 7, by striking through the word "from";

and on page 4, line 1, by deleting the phrase "Sections 4 and 5" and substituting "Sections 4, 5, and 6".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 886*
Transportation Committee Substitute Adopted 7/14/97
Proposed Committee Substitute S886-PCS2798

Short Title: Trucking Adjustment Act of 1997. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO ADJUST CERTAIN STATUTES AFFECTING THE TRUCKING INDUSTRY TO ENCOURAGE THE GROWTH OF THAT INDUSTRY THROUGH INCREASED TRUCK REGISTRATIONS IN THIS STATE; TO PROVIDE CONSUMER PROTECTION PROVISIONS; AND TO PROVIDE FOR A STUDY OF CERTAIN TRUCKING-RELATED PROVISIONS BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-88 is amended by adding a new subsection to read:

"(l) The Division shall issue permanent truck and truck-tractor plates to Class A and Class B Motor Vehicles and shall include the word 'permanent' on the plate. The permanent registration plates issued pursuant to this section shall be subject to annual registration fees set in this section. The Division shall adopt the necessary rules providing for the recall, transfer, exchange, or cancellation of permanent plates issued pursuant to this subsection."

Section 2. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.

b. Meats or agricultural crop products ~~originating~~ transported from a farm to first market.

c. ~~Unprocessed forest~~ Forest products ~~originating~~ transported from a farm or ~~from~~ woodlands to first market.

d. Livestock or poultry transported from their point of origin to first market.

e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.

f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms 'recyclable' and 'processing' have the same meaning as in G.S. 130A-290(a).

g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term 'garbage' does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5."

Section 3. G.S. 20-382.2 reads as rewritten:

"**§ 20-382.2. Penalty for failure to comply with registration or insurance verification requirements.**

(a) Acts. -- A motor carrier who does any of the following is subject to a civil penalty of ~~seventy-five dollars ($75.00):~~ one thousand dollars ($1,000):

(1) Operates a for-hire motor vehicle in this State without registering its operations, as required by this Part.

(2) Operates a for-hire motor vehicle in interstate commerce in this State that does not carry a copy of either an insurance registration receipt issued to the motor carrier or a cab card with an identification stamp issued for the vehicle, as required by G.S. 20-382.

(3) Operates a for-hire motor vehicle in intrastate commerce in this State for which it has not verified it has insurance, as required by G.S. 20-382.1.

(b) Payment. -- When the Division finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not

jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Division for a hearing.

(c) Hearing. -- Upon receiving a request for a hearing, the Commissioner ~~must~~ shall schedule a hearing within 30 days after receipt of the request. If after the hearing the Commissioner determines that the motor carrier was not liable for the penalty, the amount collected ~~must~~ shall be refunded. If after the hearing the Commissioner determines that the motor carrier was liable for the penalty, the motor carrier may bring an action in the Superior Court of Wake County against the Division for refund of the penalty. A court of this State may not issue a restraining order or an injunction to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty.

(d) Proceeds. -- A penalty imposed under this section is payable to the Division. Penalties collected under this section shall be credited to the Highway Fund as nontax revenue."

Section 4. The Division of Motor Vehicles shall study the feasibility of establishing a staggered registration system for commercial motor vehicles under the International Registration Plan (IRP). The registration plan shall be coordinated with other states which currently stagger IRP registrations to eliminate, insofar as possible, multiple application dates for the same carrier. The registration plan shall provide for a smooth transition to the staggered system providing for credits and partial fees, as needed. The Division shall report the results of this study along with any legislation to implement the staggered registration system to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division by April 1, 1998.

Section 5. The Joint Legislative Transportation Oversight Committee and the Revenue Laws Study Committee shall study the following issues encouraging the growth of the trucking industry in North Carolina through increased truck registrations:

(1) The feasibility of removing the highway use tax on vehicles with a gross weight rating of more than 26,000 pounds;

(2) The replacement of the revenue from the removal of the highway use tax studied in subdivision (1) of this section by an increase in registration fees for the same vehicles by ten cents (10¢) per 100 pounds of registered weight; and

(3) Eliminate the stacking of overweight penalties by restricting the penalties so that they do not exceed the highest axle-group weight that exceeds the allowable limits rather than assessing separate penalties for each axle-group and stacking those penalties for the same weight violations.

The Joint Legislative Transportation Oversight Committee may make an interim report of the study authorized by this section to the 1998 Session of the General Assembly and shall make a final report to the 1999 Session of the General Assembly.

Section 6. Sections 4, 5, nad 6 of this act are effective when this act becomes law. Sections 2 and 3 of this act become effective October 1, 1997. Section 1 of this act becomes effective January 1, 1999.

EXPLANATION OF SENATE 886:
Proposed Committee Substitute
Trucking Adjustment Act of 1997

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: July 31, 1997
SPONSOR: Senator Jordan

The proposed committee substitute for **Senate Bill 886** makes the following changes to the motor vehicle laws that affect the trucking industry and provides for the following studies:

- Allows Class A and B Commercial vehicles to be issued permanent license plates.
- Allows wood chips and other processed forest products to be transported on a light-traffic road from the woodlands to the first market.
- Lowers the penalty for violating the weight limit on any highway for a vehicle transporting wood chips and processed lumber.
- Substantially increases the civil penalty for operating a for-hire vehicle in violation of the registration and insurance verification requirements.
- Directs the Division of Motor Vehicles to study the feasibility of establishing a staggered registration system for commercial vehicles.
- Directs the Joint Legislative Transportation Oversight Committee and the Revenue Laws Study Committee to study the feasibility of removing the highway use tax on vehicles with a gross weight rating of more than 26,000 pounds and replacing the revenue with an increase in the vehicles' registration fees.

Section 1 would authorize DMV to issue permanent registration plates to Class A and B commercial vehicles. These vehicles are primarily those that have a gross vehicle weight of more than 26,000 pounds. Under current law, these vehicles are registered on a calendar year basis and they receive a new license plate each year. Class C vehicles must also be renewed annually. However, the registrations may be on a staggered basis and the renewal of most of these vehicles is evidenced by a renewal sticker. The only vehicles that currently enjoy a permanent plate are publicly owned vehicles and semitrailers and trailers. Semitrailers and trailers may be issued a multiyear plate that is valid until the owner transfers the vehicle or surrenders the plate. The one-time fee for this plate is $75.00.

Effective January 1, 1999, Class A and B commercial vehicles would be issued one plate that would need to be renewed annually. However, the plate would bear the word "PERMANENT" and there would be no renewal sticker attached to the plate that would inform law enforcement of the validity of the vehicle's registration. The Division is authorized to issue the necessary rules providing for the recall, transfer, exchange, or cancellation of these permanent plates.

Section 2 does two things. It allows processed forest products to be transported from the farm or woodlands to first market without regard to the weight limits for light-traffic roads. It also provides that the penalty imposed on a vehicle transporting these products for violating the weight limit on other roads is one-half of what it would otherwise be.

Under current law, unprocessed forest products, primarily trees, can be transported from the place they are cut to the first market on light-traffic roads without regard to the weight limit restrictions. This bill expands the exception to include processed forest products, such as wood chips and lumber. A light-traffic road is one on which the Department of Transportation has limited the axle weight of the vehicles that may travel on it below the statutory limits. The Department may post a road as a light-traffic road when it determines that the road is inadequate to carry and will be injuriously affected by vehicles carrying the maximum axle weight. Vehicles excepted from the light-traffic road limitations are also assessed a lesser penalty for violating the single-axle and tandem-axle weight limits on other roads.

Section 3 increases the civil penalty for operating a for-hire vehicle in violation of the registration and insurance requirements from $75 to $1,000. **Sections 4 and 5** direct DMV, the Transportation Oversight Committee, and the Revenue Laws Study Committee to study the feasibility of several issues relating to the trucking industry:

- The feasibility of a staggered registration system for commercial motor vehicles.
- The feasibility of removing the highway use tax on vehicles with a gross weight of more than 26,000 pounds.
- The feasibility of increasing the registration fees on vehicles with a gross weight of more than 26,000 pounds.
- The feasibility of eliminating the stacking of overweight penalties.

Attachment # 2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

July 31, 1997 After session

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Watson	N.C. Chapter – Sierra Club 5513 Edinglenhaven, Raleigh 27604
Juanita Shearer-Swink	NC Board of Transportation
Margaret Kluttz	Mayor of City of Salisbury NC BOT
Travis Paxton	Paxton + Steel
Sandra Long	Martin Marietta Materials
Mac Bordey	N.C. Aggregates Assoc.
Fred Allen	NC Aggregates Assn.
Dan Deloach	NCDOT
DAVID KING	NCDOT
Jim Ritchey	TTA.
Boyd Cauble	City of Charlotte

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

July 31, 1997

Date After session

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cheryl S. Cook	NC Coalition For Public Transportation
Franklin Freeman	Governor's office
George Long	NCDOR
Tom Darden	NCDOT Board / TTA
Tommy Harrelson	Enterprise
Nancy Workman	Thrifty Car Rental
Frank Colonna	Triangle Rent A Car
Edward Jernigan	Dollar - Rent - A - Car
N. J. Holman	NCPTA / NCCPT
Susan Valauri	Nationwide
Leslie Bevington	NCCBI

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

July 31, 1997

Date After Session

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carolyn Grant	Greater Raleigh Chamber of Commerce
Sandy Sands	WCSR
Mallie Haskins	Charlotte Chamber
Bill Scoggin	NCBA
[illegible]	SAS ~~INST~~
Chip Killian	Moore & Van Allen
[illegible]	"
[illegible]	Poyner & Spruill
Curt Williams	Governor's Office
Charles Francis	Nora & Francis / Alcoa
Bryce Worth	Senator Reeves

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, August 04, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE, AS AMENDED

H.B.(CS#2)**1231** Local Transit Revenue Options.
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **841** Expand Subsidiary Dividend Deduction.
Draft Number: PCSX7847
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**39** Modify Setoff Debt Collection.
Draft Number: PCSX1854
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B.(CS #1)**886** Trucking Adjustment Act of 1997.
Draft Number: PCS2798
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1156** March of Dimes License Plates.
Draft Number: PCSX6313
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

**UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2**

H.B.(SCS #1) **1097** Fisheries Reform Act-2.

Draft Number:	PCSA410
Sequential Referral:	Appropriations
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 6

Committee Clerk Comment: S 39 841 886 H 1097 1156 1231

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 485
Committee Substitute Favorable 4/14/97
Committee Substitute #2 Favorable 4/23/97

Short Title: Funeral Establishments/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE PRACTICE OF FUNERAL SERVICE, CREMATIONS, AND FUNERAL AND BURIAL TRUST FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.20(e1) reads as rewritten:

"(e1) 'Funeral chapel' means a chapel or other facility separate from the funeral establishment premises for the reposing of dead human bodies, visitation or funeral ceremony, which is owned, operated, or maintained by a funeral ~~establishment,~~ establishment or other licensee under this Article, and which does not use the word 'funeral' in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed or offered for sale any caskets or other funeral merchandise; in which or on the premises of which there is not located any funeral business office or a preparation room; in which or on the premises of which no funeral sales, financing, or arrangements are made; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment."

Section 2. G.S. 90-210.23(d) reads as rewritten:

"(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which ~~he~~ the person is a licensee or resident ~~trainee, and every~~ trainee. Every funeral service establishment and its records and every place of

business where the practice of funeral service or embalming is carried on and its records ~~thereof~~ shall be subject to inspection by the Board during normal hours of operation and periods shortly before or after normal hours of operation and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident ~~trainee~~ trainee, embalming facility, and funeral service establishment shall provide the Board with ~~his or its~~ a current post-office address which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident ~~trainee~~ trainee, embalming facility, or funeral service establishment shall be validly given when mailed to the address so provided.

The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board."

Section 3. G.S. 90-210.23(e) reads as rewritten:

"(e) The Board is empowered to regulate and inspect, according to law, funeral service ~~establishments,~~ establishments and embalming facilities, their ~~operation~~ operation, and the licenses under which they are operated, and to enforce as provided by law the rules, ~~regulations~~ regulations, and requirements of the Division of Health Services and of the city, ~~town~~ town, or county ~~wherein any such~~ in which the funeral service establishment or embalming facility is maintained and operated. Any funeral establishment or embalming facility ~~which,~~ that, upon inspection, is found not to meet all of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain that the deficiency or other violation has been corrected. The Board is also empowered to enforce compliance with the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time."

Section 4. G.S. 90-210.24(b)(1) reads as rewritten:

"(1) Enter the office, establishment or place of business of any funeral service licensee, funeral director or embalmer in North Carolina, and any office, establishment or place in North Carolina where the practice of funeral service or embalming is carried on, or where that practice is advertised as being carried on, or where a funeral is being ~~conducted,~~ conducted or a body is being embalmed, to inspect the records, office, ~~or establishment,~~ establishment, or facility, or to inspect the practice being carried on or license or registration of any licensee and any resident trainee operating therein;".

Section 5. G.S. 90-210.25(a)(1) reads as rewritten:

"(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction in a course of study including

the subjects set out in ~~items~~ item e.1. ~~and 2.~~ of this subsection in a mortuary science college approved by the Board, or be a graduate of a mortuary science college approved by the Board.

d. Have completed 12 months of resident traineeship as funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written funeral director examination on the following subjects:

1. ~~Basic health sciences, including microbiology, hygiene, and public health,~~ Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

~~2. Funeral service administration, including accounting, psychology, funeral principles and directing, and~~

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 6. G.S. 90-210.25(a)(2) reads as rewritten:

"(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Be a graduate of a mortuary science college approved by the ~~Board,~~ Board.

d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written embalmer examination on the following subjects:

1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology and forensic pathology,~~ Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

~~2. Funeral service sciences, including embalming and restorative art, and~~

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the

care, transportation and disposition of dead human bodies."

Section 7. G.S. 90-210.25(a)(3) reads as rewritten:

"(3) To be licensed for the practice of funeral service under this Article, a person must:

a. Be at least 18 years of ~~age;~~ age.

b. Be of good moral ~~character;~~ character.

c. Be a graduate of a mortuary science college approved by the ~~Board;~~ Board.

d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written funeral service examination on the following subjects:

1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology, forensic pathology hygiene and public health;~~ Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

2. ~~Funeral service sciences, including embalming and restorative art;~~ Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

~~3. Funeral service administration, including accounting, psychology, funeral principles and directing, and~~

4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 8. G.S. 90-210.25(a)(5) reads as rewritten:

"(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to ~~enrollment; except that for renewals for calendar year 1980 the required length of study shall be a total of 15 hours in the three years immediately preceding January 1, 1980.~~ enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the

requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more, and for all licensees who are, at the time of renewal, members of the General Assembly. The waiver for 25-year licensees shall apply only to those licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or a trainee program, or make an application for a license.

The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee."

Section 9. G.S. 90-210.25 is amended by adding a new subsection to read:

"(a1) Inactive Licenses. -- Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board."

Section 10. G.S. 90-210.25(b)(3) reads as rewritten:

"(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. ~~Provided,~~ Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article."

Section 11. G.S. 90-210.25(d) reads as rewritten:

"(d) Establishment Permit. --

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral ~~establishment,~~ establishment.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the ~~establishment,~~ establishment.

c. It is shown that the funeral establishment satisfies the requirements of ~~G.S. 90-210.27A, and~~ G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a ~~partner~~ partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year.

A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration coming after the first day of February.

(4) The Board may suspend or revoke a permit when an owner, ~~partner~~ partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment."

Section 12. G.S. 90-210.25 is amended by adding a new subsection to read:

"(d1) Embalming Outside Establishment. -- An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board."

Section 13. G.S. 90-210.25(e) reads as rewritten:

"(e) Revocation; Suspension; Compromise; Disclosure. --

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B:

a. Conviction of a felony or a crime involving fraud or moral ~~turpitude;~~ turpitude.

b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral ~~service;~~ service.

c. False or misleading advertising as the holder of a ~~license;~~ license.

d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the ~~licensee;~~ licensee.

e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular ~~licensee;~~ licensee.

f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing ~~business;~~ business.

g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral ~~service;~~ service.

h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the ~~licensee;~~ licensee.

i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed ~~of;~~ of.

j. Violating or cooperating with others to violate any of the provisions of this ~~Article or of~~ Article, the rules and regulations of the ~~Board;~~ Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies;~~ bodies.

l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody ~~thereof;~~ thereof.

m. Knowingly making any false statement on a certificate of ~~death;~~ death.

n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer in compromise to pay a penalty of not more than one thousand dollars ($1,000). The Board may either accept a compromise or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subsection (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the ~~next of kin and of the persons who may be chargeable with the funeral expenses of such decedent.~~ persons who have the legal authority to direct the disposition of the decedent's body. If any ~~such kin be~~ persons are found, ~~his or her~~ their authority and directions shall govern the disposal of the remains of ~~such~~ the decedent. Any funeral service establishment receiving ~~such~~ the remains in violation ~~hereof~~ of this subsection shall make no charge for any service in connection with ~~such~~ the remains prior to delivery of ~~same~~ the remains as stipulated by ~~such kin;~~ the persons having legal authority to direct the disposition of the body. ~~provided, however, this~~ This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the ~~next of kin or the persons chargeable with the expenses~~ persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: 'This statement of disclosure is provided pursuant to the requirements of North Carolina G.S. 90-210.25(e).'"

Section 14. G.S. 90-210.27A reads as rewritten:

"§ 90-210.27A. Funeral establishments.

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

(1) Contain one standard type operating ~~table;~~ table.

(2) Contain facilities for adequate ~~drainage;~~ drainage.

(3) Contain a sanitary waste ~~receptacle;~~ receptacle.
(4) Contain an instrument ~~sterilizer;~~ sterilizer.
(5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily ~~cleaned;~~ cleaned.
(6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all ~~times;~~ times.
(7) Have a placard or sign on the door indicating that the preparation room is ~~private; and~~ private.
(8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a reposing room for dead human bodies, of suitable size to accommodate a casket and visitors.

~~(d) No person who has been convicted of a felony shall:~~
~~(1) Own a funeral establishment if it is owned by a sole proprietorship;~~
~~(2) Be a partner in a funeral establishment if it is owned by a partnership;~~
~~(3) Be an officer, member of the board of directors or owner of twenty-five percent (25%) or more of the stock if it is owned by a corporation.~~

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively ~~engaged, on a day-to-day basis,~~ engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment or other licensee under this Article shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the Board."

Section 15. G.S. 90-210.28 reads as rewritten:

"**§ 90-210.28. Fees.**

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit
Application $250.00

Annual renewal	175.00
Late renewal penalty	100.00
~~Establishment reinspection~~ Reinspection fee	100.00
Courtesy card	
Application	75.00
Annual renewal	50.00
Out-of-state licensee	
Application	200.00
Embalmer, funeral director, funeral service	
Application--North Carolina-Resident	150.00
-Non-Resident	200.00
Annual Renewal-embalmer or funeral director	50.00
-funeral service	100.00
Reinstatement fee	50.00
Resident trainee permit	
Application	50.00
Annual renewal	35.00
Late renewal penalty	25.00
Duplicate license certificate	25.00
Chapel registration	
Application	150.00
Annual renewal	100.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Mortuary Science to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

Section 16. G.S. 90-210.41 reads as rewritten:

"**§ 90-210.41. Definitions.**

As used in this Article, unless the context requires otherwise:

(1) 'Authorizing agent' means a person legally entitled to ~~order~~ order, or carry out the legal order for, the cremation of human remains. ~~An authorizing agent shall be, in order of priority, a spouse, an adult child, a parent, any adult sibling, guardian or close relation of the deceased.~~ In the case of indigents or any other individuals whose final disposition is the responsibility of the State, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the authorizing agent. In the case of individuals whose death occurred in a nursing home or other private institution, and in which the institution is charged

with making arrangements for the final disposition of the deceased, a representative of the institution, if legally authorized, may serve as the authorizing agent.

(2) 'Board' means the North Carolina State Board of Mortuary Science.

~~(3) 'Casket' means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal or other rigid material and ornamented and lined with fabric.~~

(4) 'Closed container' means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of cremated remains or the entrance of foreign material.

(5) 'Cremated remains' means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.

(6) 'Cremation' means the technical process, using heat, that reduces human remains to bone fragments.

(7) 'Cremation chamber' means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.

(8) 'Cremation container' means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet all of the standards established by the rules adopted by the Board.

(9) 'Crematory' means the building or portion of a building that houses the cremation chamber and that may house the holding facility, business office or other part of the crematory business. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.

(10) 'Crematory authority' means the North Carolina Crematory Authority.

(11) 'Crematory operator' means the legal entity which is licensed by the Board to operate a crematory and perform cremations.

~~(12) 'Holding facility' means an area within or adjacent to the crematory, designated for the retention of human remains prior to cremation. A holding facility must comply with any applicable public health laws and rules and must meet all of the standards established by the rules adopted by the Board.~~

(13) 'Human remains' means the body of a deceased person, including a human fetus, regardless of the length of gestation, or part of a body ~~or limb~~ that has been removed from a living or deceased person.

(14) 'Niche' means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.

~~(15) 'Scattering area' means a designated area for the scattering of cremated remains.~~

~~(16) 'Temporary container' means a temporary receptacle for cremated remains, usually made of cardboard, plastic film or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.~~

~~(17) 'Urn' means a receptacle designed to permanently encase the cremated remains.~~"

Section 17. G.S. 90-210.43 reads as rewritten:

"**§ 90-210.43. Licensing and inspection.**

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity may erect, maintain and conduct a crematory in this State and may provide the necessary appliances and facilities for the cremation of human remains, provided that such person has secured a license as a crematory operator in accordance with the provisions of this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning regulations.

(c) Application for a license as a crematory operator shall be made on forms furnished and prescribed by the Board. The Board shall examine the premises and structure to be used as a crematory and shall issue a renewable license to the crematory operator if the applicant meets all the requirements and standards of the Board and the requirements of this Article. ~~In the event of a change of ownership of a crematory, at least 30 days prior to the change the new owners shall provide the Board with the name and address of the new owners.~~

(d) Every application for licensure shall identify the individual who is responsible for overseeing the management and operation of the crematory. The crematory operator shall keep the Board informed at all times of the name and address of the manager.

(d1) All licenses shall expire on the last day of December of each year. A license may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license may be renewed by paying a late fee as provided in G.S. 90-210.48 in addition to the annual renewal fee. Licenses that remain expired six months or more require a new application for renewal. Licenses are not transferable. A new application for a license shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.

(e) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this ~~Article.~~ Article, or unless otherwise permitted by statute.

(f) Whenever the Board finds that an owner, ~~partner~~ partner, manager, member, or officer of a crematory operator or an applicant to become a crematory operator, or that any agent or employee of a crematory operator or an applicant to become a crematory operator, with the direct or implied permission of such owner, ~~partner~~ partner, manager, member, or officer, has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with the procedures of Chapter 150B:

(1) Conviction of a felony or a crime involving fraud or moral ~~turpitude;~~ turpitude.

(2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of ~~cremation;~~ cremation.

(3) False or misleading ~~advertising;~~ advertising.

(4) Gross immorality, including being under the influence of alcohol or drugs while performing cremation ~~services;~~ services.

(5) Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been cremated or otherwise disposed ~~of;~~ of.

(6) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the ~~Board;~~ Board.

(7) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies;~~ bodies.

(8) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in ~~G.S. 90-210.47(e);~~ G.S. 90-210.47(e).

(9) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000).

(g) The Board and Crematory Authority may hold hearings in accordance with the provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly by the Board and the Crematory Authority. The Board and the Crematory Authority shall jointly constitute an 'agency' under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory operators and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for

each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation or proceeding conducted by it or conducted jointly with the Crematory Authority. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor."

Section 18. G.S. 90-210.44 reads as rewritten:

"**§ 90-210.44. Authorization and record keeping.**

The Board shall establish requirements for record ~~keeping and~~ keeping, authorizations, and cremation reports. ~~it~~ It shall be a violation of this Article for any crematory operator to fail to comply with the requirements."

Section 19. G.S. 90-210.45 reads as rewritten:

"**§ 90-210.45. Cremation procedures.**

(a) No human body shall be cremated before the crematory operator receives a death certificate signed by the attending physician or an authorization for cremation signed by a medical examiner.

(b) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred. In the event such death comes under the jurisdiction of the medical examiner, the human remains shall not be received by the crematory operator until authorization to cremate has been received in writing from the medical examiner of the county in which the death occurred. In the event the crematory operator is authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable.

(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber. Relatives of the deceased, the authorizing agent, medical examiners and law enforcement officers in the execution of their duties shall be authorized to have access to the holding facility and crematory facility.

(c1) Human remains shall be cremated only while enclosed in a cremation container.

(d) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(d1) Every crematory shall have a holding facility, within or adjacent to the crematory, designated for the retention of human remains prior to cremation. The

holding facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(e) Crematory operators shall comply with standards established by the Board for the reduction and pulverization of human remains by the cremation process."

Section 20. G.S. 90-210.46(a) reads as rewritten:

"(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. ~~A copy of this statement shall be retained by the crematory operator.~~ The crematory operator may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory operator pursuant to G.S. 90-210.44."

Section 21. G.S. 90-210.47(b) reads as rewritten:

"(b) A crematory operator shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory operator that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization."

Section 22. G.S. 90-210.48(a) reads as rewritten:

"**§ 90-210.48. Fees.**

(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory operators and applicants:

(1)	Licensee application fee.	$400.00
(2)	Annual renewal fee.	150.00
(3)	Late renewal penalty.	75.00
(4)	Re-inspection fee.	100.00
(5)	Per cremation fee.	10.00
(6)	Late fee, per cremation.	10.00
(7)	Late fee, cremation report.	75.00 per month."

Section 23. G.S. 90-210.60(3) reads as rewritten:

"(3) 'Insurance company' means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;".

Section 24. G.S. 90-210.63(a)(2) reads as rewritten:

"(2) The original contracting preneed licensee shall immediately pay all ~~such~~ funds received to the successor funeral establishment ~~so designated;~~ designated. ~~provided, however, regardless~~ Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). ~~and~~

~~provided further, if~~ Except when there was a substitution under G.S. 90-210.68(d1) and (e), if the original contracting preneed licensee did not retain any portion of payments made ~~to it~~ as is permitted by G.S. 90-210.61(a)(2) then ~~such~~ the preneed licensee may retain up to ten percent (10%) of ~~said~~ the funds received from the financial institution. Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon."

Section 25. G.S. 90-210.64(a) reads as rewritten:

"(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance or similar claim form and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board."

Section 26. G.S. 90-210.66(b) reads as rewritten:

"(b) From the fee ~~of fifteen dollars ($15.00)~~ for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit two dollars ($2.00) into the Fund. The Board may suspend the deposits into the Fund at any time and for any period for which the Board determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve."

Section 27. G.S. 90-210.67 reads as rewritten:

"§ 90-210.67. Application for license.

(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. There shall be two types of licenses: a preneed funeral establishment license and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license. The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act. Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, they may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed

preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event they engage in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of Insurance. Every preneed funeral contract shall be signed by a person licensed as a funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the General Statutes.

Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Board. Each application shall contain at least the following: the full names and addresses (both residence and place of business) of the applicant, and every partner, member, officer and director thereof if the applicant is a partnership, limited liability company, association, or corporation and any other information as the Board shall deem necessary. A preneed funeral establishment license shall be valid only at the address stated in the application or at a new address approved by the Board.

(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than one hundred fifty dollars ($150.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed one hundred fifty dollars ($150.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and ~~Each~~ each preneed funeral establishment licensee shall pay annually to the Board on or before ~~June 30 of each year~~ that date a license renewal fee of not more than one hundred fifty dollars ($150.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than one hundred dollars ($100.00) in addition to the annual renewal fee.

(c) An application for a preneed sales license shall be accompanied by a nonrefundable application fee of not more than fifty dollars ($50.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed fifty dollars ($50.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed sales license provided the applicant has met the qualifications to engage in preneed funeral planning as established by the Board unless it determines that the applicant has violated any provision of G.S. 90-210.69(c). The license shall expire on December 31 and ~~Each~~ each preneed sales licensee shall pay annually to the Board on or before ~~June 30 of each year,~~ that date a license renewal fee of not more than fifty dollars ($50.00). On or before the first day of February, a license may be

renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than twenty-five dollars ($25.00) in addition to the annual renewal fee.

(d) Any person selling a preneed funeral contract, whether funded by a trust deposit or a prearrangement insurance policy, shall remit to the Board, within 10 days of the sale, a fee ~~of fifteen dollars ($15.00)~~ not to exceed twenty dollars ($20.00) for each ~~sale.~~ sale and a copy of each contract. The person shall pay a late fee of not more than twenty-five dollars ($25.00) for each late filing and payment. The ~~fee~~ fees shall not be remitted in cash.

(d1) The Board may also set and collect a fee of not more than twenty-five dollars ($25.00) for the late filing of a certificate of performance and a fee of not more than one hundred and fifty dollars ($150.00) for the late filing of an annual report.

(e) The fees collected under this Article, except for monies used pursuant to G.S. 90-210.66, shall be used for the expenses of the Board in carrying out the provisions of this Article. Any funds collected under this Article and remaining with the Board after all expenses under this Article for the current fiscal year have been fully provided for shall be paid over to the General Fund of the State of North Carolina. Provided, however, the Board shall have the right to maintain an amount, the cumulative total of which shall not exceed twenty percent (20%) of gross receipts under this Article for the previous fiscal year of its operations, as a maximum contingency or emergency fund.

(f) Any entity licensed by the Commissioner of Banks under Article 13B of Chapter 90 of the General Statutes before July 9, 1992 shall be entitled to have its license renewed notwithstanding that it is not a funeral establishment, provided it otherwise satisfies the requirements of this Article."

Section 28. G.S. 90-210.68 reads as rewritten:

"**§ 90-210.68. Licensee's books and records; notice of transfers, assignments and terminations.**

(a) Every preneed licensee shall keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing prearrangement insurance policies. The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its examiners, which the Board may appoint to assist in the enforcement of this Article, may during normal hours of operation and periods shortly before or after normal hours of operation, investigate the books, records, and accounts of any licensee under this Article with respect to trust funds, preneed funeral contracts, and prearrangement insurance policies. Any preneed licensee who, upon inspection, fails to meet the requirements of this subsection or who fails to keep an appointment for an inspection shall pay a reinspection fee to the Board in an amount not to exceed one hundred dollars ($100.00). The Board may require the attendance of and

examine under oath all persons whose testimony it may require. Every preneed licensee shall submit a written report to the Board, at least annually, in a manner and with such content as established by the Board, of its preneed funeral contract sales and performance of such contracts. The Board may also require other reports.

(b) A preneed licensee may transfer preneed funds held by it as trustee from the financial institution which is a party to a preneed funeral contract to a substitute financial institution that is not a party to the contract. Within 10 days after the transfer, the preneed licensee shall notify the Board, in writing, of the name and address of the transferee financial institution. Before the transfer may be made, the transferee financial institution shall agree to make disclosures required under the preneed funeral contract to the Board or its inspectors or examiners. If the contract is revocable, the licensee shall notify the contracting party of the intended transfer.

(c) If any preneed licensee transfers or assigns its assets or stock to a successor funeral establishment or terminates its business as a funeral establishment, the preneed licensee and assignee shall notify the Board at least 15 days prior to the effective date of the transfer, assignment or termination: provided, however, the successor funeral establishment must be a preneed licensee or shall be required to apply for and be granted such license by the Board before accepting any preneed funeral contracts, whether funded by trust deposits or preneed insurance policies. Provided further, a successor funeral establishment shall be liable to the preneed funeral contract purchasers for the amount of contract payments retained by the assigning or transferring funeral home pursuant to G.S. 90-210.61(a)(2).

(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

(d1) When a preneed funeral establishment license lapses or is terminated for any reason, the preneed licensee shall immediately divest of all the unperformed preneed funeral contracts and shall transfer them and any amounts retained under G.S. 90-210.61(a)(2) to another preneed funeral establishment licensee pursuant to the procedures of subsection (e) of this section.

(e) In the event that any preneed licensee is unable or unwilling or is for any reason relieved of its responsibility to perform as trustee or to perform any preneed funeral contract, the Board, with the written consent of the purchaser of the preneed funeral contract, or after the purchaser's death or incapacity, the preneed funeral contract beneficiary ~~may~~ shall order the contract and any amounts retained pursuant to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that the substitute licensee agrees to accept such assignment.

(f) The substitute preneed licensee under subsections (d1) and (e) of this section shall be liable to the preneed funeral contract purchasers for the amount of contract payments that had been retained by, and that the substitute preneed licensee has received from, the assigning preneed licensee."

Section 29. G.S. 90-210.69(c) reads as rewritten:

"(c) In accordance with the provisions of Chapter 150B of the General Statutes, ~~If~~ if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a ~~license;~~ license.

(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such ~~activities;~~ activities.

(3) A crime involving fraud or moral turpitude by conviction ~~thereof;~~ thereof.

(4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral ~~planning;~~ planning.

(5) False or misleading ~~advertising; or~~ advertising.

(6) Violating or cooperating with others to violate any provision of this ~~Article or~~ Article, the rules and regulations of the Board, ~~pursuant thereto.~~ or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000)."

Section 30. G.S. 90-210.69(e) reads as rewritten:

"(e) ~~All hearings under this Article shall be conducted pursuant to G.S. 150B-40(e).~~ Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes."

Section 31. G.S. 90-210.70(c) reads as rewritten:

"(c) If a corporation or limited liability company embezzles or fraudulently or knowingly and willfully misapplies or converts preneed funeral funds as provided in subsection (a) hereof or otherwise violates any provision of this Article, the officers, directors, members, agents, or employees responsible for committing the offense shall be fined or imprisoned as herein provided."

Section 32. G.S. 90-210.70(d) reads as rewritten:

"(d) The Board shall have the power to investigate violations of this section and shall deliver all evidence of violations of subsection (a) of this section to the district attorney in the county where the offense occurred. The Board shall, with the fees collected under this Article, employ legal counsel and other staff to monitor preneed trusts, investigate complaints, audit preneed trusts, and be responsible for delivering evidences to the district attorney when there is evidence ~~of criminal violation.~~ that a felony has been committed by a licensee. The record of complaints, auditing, and

enforcement shall be presented in an annual report from the Board to the General Assembly."

Section 33. Article 13D of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-210.73. Not public record.**

The names and addresses of the purchasers and beneficiaries of preneed funeral contracts filed with the Board shall not be subject to Chapter 132 of the General Statutes."

Section 34. Article 16 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 7. Disposition of Body or Body Parts.

"**§ 130A-422. Authority to dispose of body or body parts.**

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

(1) The surviving spouse.
(2) A majority of the surviving children.
(3) The surviving parents.
(4) A majority of the surviving siblings.
(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.
(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes

or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

Section 35. The Board shall adopt temporary rules to implement the provisions of this act.

Section 36. This act becomes effective October 1, 1997.

SENATE FINANCE COMMITTEE

WEDNESDAY, AUGUST 6, 1997

3:00 P.M. - ROOM 544 LOB

The Senate Finance Committee met. There were 15 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order.

H. B. 99 - Camden School Acquisition

Representative Owens explained the bill. Senator Kerr sent forth an amendment to add Burke County to this bill and made a motion to that effect, motion passed. Senator Kerr moved to roll this amendment into a committee substitute and give the bill a "favorable" report, motion passed.

H. B. 1114 - Bad Check Collections Pilot

Representative Sexton came to explain the bill. Fran Preston of the N. C. Retail Merchants spoke on this bill. Colon Willoughby, District Attorney of Wake County, spoke on the bill. Senator McDaniel moved to give the bill a "favorable" report, motion passed.

NOTE: Senator Hoyle announced that the following two bills would be discussed but would not be voted on by the Committee at this meeting.

H. B. 1027 - State Treasurer Venture Capital

Representative Owens came to explain the bill. Senator Soles moved for adoption of committee substitute to the bill for the purpose of explanation, motion passed. Secretary Norris Tolson, Department of Commerce, spoke on the bill. Mr. Doug Chappell with the State Treasurer's Office came to speak on the bill. Mr. Rick Carlisle with the Department of Commerce explained the intent of the bill as to investments.

S. B. 96 - Venture Capital Investment Incentive

Representative Wilkins came to explain the bill. Senator Hoyle stated that we have a proposed committee substitute that was adopted at a previous meeting before us at this time for discussion. Senator Hoyle spoke on the bill. Mr. John Coleman with Advantage Capital in New Orleans, Louisiana spoke on the bill. Mr. Sam Poole, Attorney and Lobbyist representing the interest in this bill, spoke on the Bill.

Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report dated 8-07-97 is Attachment # 3

Attachment #1

AGENDA

FOR

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, AUGUST 6, 1997

AT 3:00 P.M., ROOM 544

H. B. 99 - CAMDEN SCHOOL ACQUISITION - REP. H. HUNTER

H. B. 1114 - BAD CHECK COLLECTIONS PILOT - REP. EDDINS

H. B. 1027 - STATE TREASURER VENTURE CAPITAL - REP. OWENS

S. B. 956 - VENTURE CAPITAL INVESTMENT INCENTIVE - SEN.HOYLE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 99*
Committee Substitute Favorable 7/17/97
Third Edition Engrossed 7/23/97

Short Title: Camden School Acquisition. (Local)

Sponsors:

Referred to:

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW CAMDEN COUNTY TO ACQUIRE PROPERTY FOR USE BY ITS COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1, as amended by S.L. 1997-24, S.L. 1997-162, S.L. 1997-190, and S.L. 1997-236, reads as rewritten:

"**§ 153A-158.1. Acquisition and improvement of school property in certain counties.**

(a) Acquisition by County. -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) Construction or Improvement by County. -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property,

lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) Board of Education May Contract for Construction. -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Cabarrus, Camden, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin, Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union, Vance, Wake, Wilson, and Watauga Counties."

Section 2. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 99:
Camden School Acquisition (3rd Edition)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 4, 1997
SPONSOR: Representative Howard Hunter

House Bill 99 is a local bill that applies only to Camden County and the local boards of education for school administrative units in that county. The substance of the bill is that same as that already enacted for 56 other counties.

The bill makes the following changes concerning the acquisition and financing of public school facilities:

(1) It authorizes Camden County to acquire real or personal property for use by a school administrative unit located in the county when requested to do so by the unit. Under current law, only those counties listed in G.S. 153A-158.1(e) have this authority. Under general law, a county is authorized to acquire real or personal property only on behalf of the county or an agency of the county and a school administrative unit is not an agency of the county.

(2) It authorizes the local boards of education to contract with Camden county for the erection of a public school building that is located on a site owned by the county. Under current general law, local boards of education are required to hold title to all school property and therefore have no authority to make contracts concerning the construction of school buildings located on sites not owned by them.

(3) It authorizes the local boards of education to transfer to the county property on which a school building in need of renovation or repair is located for any price agreed to by the board of education and the county. Current law requires transfers from a local board of education to a county to be at fair market value and allows a local board of education to transfer property to a county only if the board does not believe the property is necessary or desirable for a school.

The effect of these changes is to allow certain installment financing to be used for public school construction or renovation. The installment financing that can be used is an installment contract secured by a security interest in the building constructed or renovated. This type of financing is available to counties but is not generally available to school administrative units. Under G.S. 160A-20, only a school administrative unit located in a county whose population exceeds

90,000 and whose local board of education can levy a school tax is authorized to use this type of financing.

One type of installment financing is the issuance of certificates of participation. A certificate of participation is a document setting out the share of a local unit's debt that is owed to that person. In practice, the holder of the certificate receives interest and principal payments in a manner similar to interest and principal payments on a bond issued by the borrowing unit. Unlike the issuance of a bond, however, the issuance of a certificate of participation is not subject to a vote of the people.

If a county builds and equips a school on behalf of a local school administrative unit, the county can receive a refund of sales and use taxes paid on the project. In contrast, the local school administrative unit could not receive a refund of these taxes if it built and equipped the school itself. This is because a local school administrative unit is not one of the governmental entities that are allowed refunds of sales and use taxes under G.S. 105-164.14(c).

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 99

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H99-ARBX-8/4 Page 1 of __

Date_____,1997

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Senator_____

moves to amend the bill on page 1, line 2, by deleting "CAMDEN COUNTY" and substituting "BURKE AND CAMDEN COUNTIES";

and on page 1, line 3, by rewriting the line to read: "BY THEIR COUNTY BOARDS OF EDUCATION.";

and on page 2, line 8, by inserting before the word "Cabarrus," the word "Burke,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 99*
Committee Substitute Favorable 7/17/97
Third Edition Engrossed 7/23/97
Proposed Senate Committee Substitute H99-PCS7365

Short Title: Camden School Acquisition. (Local)

Sponsors:

Referred to:

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW BURKE AND CAMDEN COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1, as amended by S.L. 1997-24, S.L. 1997-162, S.L. 1997-190, and S.L. 1997-236, reads as rewritten:

"**§ 153A-158.1. Acquisition and improvement of school property in certain counties.**

(a) Acquisition by County. -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) Construction or Improvement by County. -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with

additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) Board of Education May Contract for Construction. -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Burke, Cabarrus, Camden, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin, Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union, Vance, Wake, Wilson, and Watauga Counties."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1114
Committee Substitute Favorable 7/16/97
Third Edition Engrossed 7/24/97

Short Title: Bad Check Collections Pilot. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ASSESS A FEE OF FIFTY DOLLARS FOR WORTHLESS CHECKS COLLECTED THROUGH THE BAD CHECK COLLECTION PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-308 is amended by adding a new section to read:

"(c) A person who participates in a program for the collection of worthless checks under G.S. 14-107.2 must pay a fee of fifty dollars ($50.00). The fee collected under this subsection must be remitted to the State by the clerk of court in the county in which the program is established and credited to the Collection of Worthless Checks Fund. The Collection of Worthless Checks Fund is created as a special revenue fund. Revenue in the Fund does not revert at the end of the fiscal year, and interest and other investment income earned by the Fund accrues to the Fund. The money in the Fund is subject to appropriation by the General Assembly and may be used solely for the expenses of the programs established under G.S. 14-107.2 for the collection of worthless checks."

Section 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-107.2. Program for the collection of worthless check cases.**

A district attorney may establish a program for the collection of worthless check cases that would, if prosecuted under G.S. 14-107, be punishable as a Class 2 misdemeanor. The purpose of the program is to collect worthless checks in a more timely manner, to alleviate the need to prosecute each worthless check case, and to

provide an opportunity for the check passer to avoid criminal prosecution. In creating the program, the district attorney must establish criteria for the types of worthless check cases that will be eligible for collection under the program. If the check passer participates in the program by paying the fee under G.S. 7A-308(c) and providing restitution to the check taker for (i) the amount of the check or draft, (ii) any service charges imposed on the check taker by a bank or depository for processing the dishonored check, and (iii) any processing fees imposed by the check taker pursuant to G.S. 25-3-512, then the district attorney will not prosecute the worthless check case under G.S. 14-107. The Administrative Office of the Court must establish procedures for remitting the fee and providing restitution to the check taker. For the purposes of this section, the terms 'check passer' and 'check taker' have the same meanings as defined in G.S. 14-107.1."

Section 3. This act applies only to Rockingham and Wake Counties.

Section 4. This act becomes effective October 1, 1997, if Senate Bill 352 is enacted and provides funds to establish a bad check collection pilot program in Rockingham and Wake Counties. This act shall sunset June 30, 1998.

EXPLANATION OF HOUSE BILL 1114:
Bad Check Collection Pilot (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 4, 1997
SPONSOR: Representatives Sexton and Eddins

House Bill 1114 corresponds with a provision in the House Budget bill, Senate Bill 352 (5th Edition), that allocates $120,000 of the funds appropriated to the Judicial Department to establish a bad check collection pilot program in Wake and Rockingham Counties. The special provision directs the Administrative Office of the Courts to add two administrative positions to the district attorney's office in each county to assist the district attorney in collecting worthless checks in a more timely manner. The AOC will report on the effectiveness of the pilot programs by May 1, 1998. The special provision allocates enough money to cover the additional administrative positions for one year.

The bill repeats and expands upon the provision in the House budget bill. It makes it clear that a person may avoid criminal prosecution under G.S. 14-107 by participating in the program. To participate in the program, a check passer must agree to pay the $50 fee and to provide restitution to the check taker. The district attorney's office is responsible for developing the details of its program. The details may vary from district to district, depending on the needs of the district. A rural county and an urban county were chosen for the pilot program so that its effectiveness could be viewed in both settings.

The bill becomes effective October 1, 1997, and expires on June 30, 1998. The program will last less than a year. Under the special provision, the AOC will report on the effectiveness of the pilot programs to the General Assembly by May 1, 1998.

The bill establishes a $50 fee to be paid by people who participate in the program. The $50 fee would be payable in lieu of the higher district court costs. The court cost generally associated with a worthless check is $60: part of this money goes to the county for its judicial facilities, part of it goes to the sheriff's retirement fund, and part of it goes to the General Fund. Senate Bill 727 proposes to increase the court cost $15 so that the court cost associated with a worthless check would be $75. The $50 fee proposed to be charged under the worthless check collection program would be credited to a nonreverting,

interest-bearing special revenue fund, the receipts of which may only be appropriated by the General Assembly for costs incurred in establishing and maintaining bad check collection programs. The bill would become effective only if the special provision contained in the House budget bill is enacted.

Under current law, after a check is dishonored, the check taker may send a letter by certified mail to the address recorded on the check, identifying the check, explaining the circumstances of dishonor, and requesting rectification of the situation. The check taker may advise the check passer in the letter that legal action may be taken if payment is not made within 10 days. If the check passer does not remedy the situation, the check taker may file an affidavit with a judicial official before issuance of the first process or pleading in the prosecution of the worthless check.

The judicial process of recovering a worthless check is often long and tedious. This bill attempts to expedite the check collection process by adding a step to the process. Before filing a criminal action under G.S. 14-107 for a worthless check, a check taker may solicit the help of the district attorney's office through the bad check collection program. It is the belief and experience in other states that a letter from the district attorney's office results in prompter payment of worthless checks. If this program is successful, the check taker will receive the payment upon the worthless check sooner. The check passer may avoid prosecution under G.S. 14-107 and the more expensive court costs. It is a type of deferred prosecution, which may perhaps be possible under G.S. 143B-475.1. However, without the appropriation in the special provision and the fee established by this bill, the district attorney's offices do not have the financial resources to undertake this type of labor intensive program.

By its Constitution, North Carolina has a court system that is uniform across the State. The Constitution specifically provides that court fees and costs must be uniform throughout the State and that the operating expenses of the judicial department must be paid from State funds. This bill creates a program that is only available in two counties, and it establishes a fee to be paid to support the program by those who use it.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1114 (House Finance Committee Substitute)

SHORT TITLE: Bad Check Collections Pilot

SPONSOR(S): Representatives Eddins and Sexton

FISCAL IMPACT

Yes ( ) No ( ) No Estimate Available (X)

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	See Assumptions and Methodology				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Department

EFFECTIVE DATE: October 1, 1997

BILL SUMMARY: *TO ESTABLISH PILOT PROGRAMS IN WAKE AND ROCKINGHAM COUNTIES IN THE OFFICE OF THE DISTRICT ATTORNEY FOR THE COLLECTION OF WORTHLESS CHECKS.* Authorizes pilot programs as title indicates. Requires persons participating in the program to pay a $50 fee which will be deposited in a special revenue fund. These funds are to be used to pay the expenses of administering worthless check programs. Effective October 1, 1997.

ASSUMPTIONS AND METHODOLOGY: Judicial Department

EXPENDITURES

This bad check pilot program is funded in the House budget bill (SB 352 - Fifth Edition). The House Subcommittee on Justice and Public Safety included $120,000 in non-recurring funds to fund four positions in Wake and Rockingham Counties for FY 1997-98 only. The funds will pay for a DA Investigator and a DA Legal Assistant in each county effective October 1, 1997. Section 15.23 of the bill also requires AOC to report on the implementation and effectiveness of the programs by May 1, 1998.

REVENUES

The amount of revenue that would be collected from the $50 fee can not be determined at this time. According to the Administrative Office of the Courts (AOC), there is no data on the number of worthless check charges and convictions by county. Statewide, there were 93,887 defendants charged with worthless check offenses in 1996 and 54,088 defendants convicted on that charge. The revenue collected would be remitted to a special revenue fund titled *Collection of Worthless Check Fund.* All fees are subject to appropriation by the General Assembly and may only be used to pay the expenses of administering worthless check programs.

This pilot program would have some impact on court revenues collected by Wake and Rockingham Counties. Under current law, a convicted worthless check offender would pay the following court costs:

$5 for service of process and $6 in facilities fees - remitted to local governments,
$7.25 for retirement and insurance benefits of state and local law enforcement officers,
$.75 to supplement pension benefits for Sheriffs, and
$46 General Court of Justice fee - remitted to the state General Fund

Under the proposed legislation, a worthless check offender participating in this program would pay the $50 fee in lieu of court costs. Thus, Wake and Rockingham Counties would lose some court revenues if individuals participated in this program instead of going to court.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic and CharlesPerusse

APPROVED BY: Tom L. Covington
DATE: July 15, 1997

MEMORANDUM

TO: Members of the Senate Finance Committee

FROM: Fran Preston
Don McCorquodale

DATE: August 5, 1997

RE: **HB 1114 Bad Check Collections Pilot**

The shear volume of bad checks is a problem for both North Carolina's merchants and district attorneys. This bill will **establish a nine-month pilot project** (begins October 1, 1997 and sunsets June 30, 1998) for **Wake and Rockingham counties.**

The program is a win-win.

- This program offers a **benefit to the check writer:** $50 fee and deferred prosecution (no criminal record) instead of $85 court cost plus a criminal record.
- This program is a **benefit to the check taker:** because it will afford a faster path to restitution.
- This program is a **benefit to the DA's:** because it affords self-funding for part of their work load that is large and growing larger.
- If the pilot is successful, there should be a reduction in time spent by law enforcement to serve summons.

Alabama, California, Arizona and New Mexico have **successfully operated a similar program.** We hope that you can support this one-year pilot, in an attempt to resolve a most difficult problem for both DA's and merchants.

This bill has been scheduled for a hearing in the Senate Finance Committee for **Wednesday, August 6.** We hope that you can support this pilot project.

H1114 BAD CHECK COLLECTIONS PILOT

Sponsors: Representatives Wayne Sexton & Rick Eddins

THE PROBLEM

The two groups who suffer most from bad checks are the District Attorneys and the retailers. The sheer volume of checks continues to increase. One small grocery store chain reported to NCRMA that it wrote off $300,000 in uncollectable checks last year.

THE SOLUTION

Five states have empowered their District Attorneys with the authority to establish check collection units. (Alabama, Arizona, California, New Mexico and Texas.) The check collection units in these states have proven to be an overwhelming success. Checks collections have risen and the passing of bad checks has declined.

This pilot project would allow the DA's in these two counties to establish a process of **deferred prosecution** in lieu of criminal proceedings. It establishes a special fund whereby deferred prosecution monies would be used to fund a check collection unit in Wake and Rockingham county. The goal of the project is to run the units on non-taxpayer monies. The AOC (which has helped the DA's and merchants to fine tune this pilot language) will report on the progress of the project to the 1998 General Assembly.

PLEASE VOTE YES FOR H1114

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 8-6-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Coleman	Advantage Capital 909 Poydras St New Orleans, LA.
Mac Mumphrey	Pugsley + Sprinkle
[signature]	Sanford Holshouser
Theresa Kostrzewa	"
Charles Heatherly	Treasurer's Office
[signature]	" "
Angie Harris	Commerce
Sec. Norris Tolson	Commerce
Rick Carlisle	"
Brenda Dougherty	Sprint
Bill P. Williams	Commerce

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 8-6-97

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Pierce	DOC
Bob Womble	Poyner & Spruill
Lorna Harris	SAGRG

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, August 07, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS)**1114** Bad Check Collections Pilot
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**99** Camden School Acquisition
Draft Number: PCS7365
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment: Bills taken up on 8-6-97

SENATE FINANCE COMMITTEE

THURSDAY, AUGUST 7, 1997

AFTER SESSION - ROOM 544 LOB

The Senate Finance Committee met on August 7th with Senator Kerr presiding. There were 25 committee members present.

H.B. 769 - Dropout Prevention/Drivers License

Representative Sherrill was recognized to explain this bill and after her explanation, Senator Hoyle sent forth an amendment. There were several questions from the committee members to the bill sponsor and also to Ruth Sappie and Wayne Hurder from the Department of Motor Vehicles. Senator Dalton moved for the adoption of the amendment and the motion carried. Senator Allran made a motion that the bill be given a "favorable" report as amended, rolled into a new committee substitute and re-referred to Appropriations. Copy of bill, amendment, committee substitute, explanation and letters of support for the bill included in the minutes.

S.B. 956 - Venture Capital Investment Incentive

Representative Wilkins was recognized to give an overview of this bill since it was continued from Wednesday's meeting. After his explanation and questions from the committee members to Representative Wilkins, Mr. John Coleman with Advantage Capital was introduced to answer some of the questions. Copy of bill, committee substitute and explanation included in the minutes.

H.B. 1027 - State Treasurer Venture Capital

Representative Owens was recognized to give an overview of this bill since it was continued from Wednesday's meeting. Martha Harris briefly explained the new committee substitute. Representative Owens reminded the committee that this bill had already passed the House. Doug Chappell, Department of State Treasurer, was recognized to answer additional questions from the committee members. Senator Hoyle was recognized and apologized to the venture capital bill sponsors and supporters in that all the committee meetings had been rushed and not enough time to really debate the concerns. Senator Kerr in adjourning the meeting stated that everybody needs to get together and come up with some consensus to move this idea forward. Copy of bill, committee substitute and explanation included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors' Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

S.B. 629 was not heard at the committee meeting.

Attachment # 1

AGENDA

SENATE FINANCE

Thursday, August 7, 1997
Room 544

15 Minutes After Session

S.B. 956 Venture Capital Investment Incentive - Sen. Hoyle

S.B. 629 Johnston/Franklin/Cabarrus Schools. - Sen. Wellons

H.B. 1027 State Treasurer Venture Capital - Rep. Owens

H.B. 769 Dropout Prevention/Drivers License - Rep. Sherrill

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 5

HOUSE BILL 769
Committee Substitute Favorable 4/21/97
Committee Substitute #2 Favorable 5/7/97
Fourth Edition Engrossed 5/29/97
Senate Education/Higher Committee Substitute Adopted 6/26/97

Short Title: Dropout Prevention/Drivers License. (Public)

Sponsors:

Referred to: Finance.

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN STUDENTS WHO DROP OUT OF SCHOOL OR DO NOT MAKE PROGRESS TOWARD GRADUATION SHALL NOT BE ELIGIBLE FOR DRIVERS PERMITS OR LICENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-11, as amended by Chapter 16 of the 1997 Session Laws, reads as rewritten:

"**§ 20-11. Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.**

(a) Process. -- Safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years old has both instruction and experience before obtaining a drivers license, driving privileges are granted first on a limited basis and are then expanded in accordance with the following process:

(1) Level 1. -- Driving with a limited learner's permit.

(2) Level 2. -- Driving with a limited provisional license.

(3) Level 3. -- Driving with a full provisional license.

A permit or license issued under this section must have a color background or border that indicates the level of driving privileges granted by the permit or license.

(b) Level 1. -- A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school.
(2) Passes a written test administered by the Division.
(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

(c) Level 1 Restrictions. -- A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.
(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.
(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.
(4) After the first six months after issuance, the permit holder may drive at any time.
(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(d) Level 2. -- A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.
(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.
(3) Passes a road test administered by the Division.
(4) Has a driving eligibility certificate or a high school diploma or its equivalent.

(e) Level 2 Restrictions. -- A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder must be in possession of the license.
(2) The license holder may drive without supervision in any of the following circumstances:
    a. From 5:00 a.m. to 9:00 p.m.
    b. When driving to or from work.
    c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver must be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but must be the person seated next to the license holder.

(4) Every person occupying the vehicle being driven by the license holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(f) Level 3. -- A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail.

(g) Level 3 Restrictions. -- The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license.

(h) Out-of-State Exceptions. -- A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the ~~following:~~ following upon the submission of a driving eligibility certificate or a high school diploma or its equivalent:

(1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit and authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division concerning time of driving, supervision, and passenger limitations. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.

(2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another

jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(i) Application. -- An application for a permit or license authorized by this section must be signed by both the applicant and another person. That person must be the applicant's parent or guardian if the parent or guardian resides in this State and is qualified to be a supervising driver. In all other circumstances, that person must be an adult approved by the Division.

(j) Duration and Fee. -- A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ten dollars ($10.00). The fee for a full provisional license is the amount set under G.S. 20-7(i).

(k) Supervising Driver. -- A supervising driver must be a parent or guardian of the permit holder or license holder if a parent or guardian signed the application for the permit or license. If a parent or guardian did not sign the application, the supervising driver must be the adult who signed the application. A supervising driver must be a licensed driver who has been licensed to drive for at least five years.

(l) Violations. -- It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176.

(m) Insurance Status. -- The holder of a limited learner's permit is not considered a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.

(n) Driving Eligibility Certificate. -- A person who desires to obtain a permit or license issued under this section and who does not have a high school diploma or its equivalent must have a driving eligibility certificate. A driving eligibility certificate must meet the following conditions:

(1) The person who is required to sign the certificate under subdivision (4) of this subsection must show that he or she has determined that one of the following requirements is met:

a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.
b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.
c. The person cannot make progress toward obtaining a high school diploma or its equivalent.

(2) It must be on a form approved by the Division.

(3) It must be dated within 30 days of the date the person applies for a permit or license issuable under this section.

(4) It must be signed by the applicable person named below:
a. The principal, or the principal's designee, of the public school in which the person is enrolled.
b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.
c. The person who provides the academic instruction in the home school in which the person is enrolled.
d. The designee of the board of directors of the charter school in which the person is enrolled.
e. The president, or the president's designee, of the community college in which the person is enrolled.

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 2. G.S. 20-13.2 is amended by adding a new subsection to read:

"(c1) The Division must revoke the permit or license of a person under the age of 18 if the proper school authority notifies the Division that the person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n). Notwithstanding subsection (d) of this section, the length of revocation must last until the person's eighteenth birthday or until the Division restores the permit or license under this subsection. The Division must restore a person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

(1) A high school diploma or its equivalent.

(2) A driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 3. G.S. 115C-12 is amended by adding a new subdivision to read:

"(27) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. -- The State Board of Education shall issue rules defining what is equivalent to a high school diploma for the purposes of G.S. 20-11. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

The State Board also shall issue rules for the procedures a person who is or was enrolled in a public school, in a charter school, or in a nonpublic school accredited by the Board must follow and the requirements that person must meet to obtain a driving eligibility certificate. The person required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

a. The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

b. A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.

c. The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

These rules shall provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public school, in a charter school, or in a nonpublic school accredited by the Board no longer meets the requirements for a driving eligibility certificate."

Section 4. G.S. 115D-5 is amended by adding the following new subsection to read:

"(a3) The State Board of Community Colleges shall issue rules for the procedures a person who is or was enrolled in a community college must follow and the requirements that person must meet to obtain a driving eligibility certificate. The person required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.

(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

The rules shall provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate. The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates."

Section 5. Article 39 of Chapter 115C of the General Statutes is amended by adding the following new Part:

"Part 4. Miscellaneous Requirements.

"**§ 115C-566. Driving eligibility certificates; requirements.**

The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Office of the Governor, shall issue rules for the procedures a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education must follow and the requirements that person must meet to obtain a driving eligibility certificate. The person required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.

(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

The rules shall provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate."

Section 6. The State Board of Education shall initiate and coordinate meetings with the Division of Nonpublic Education in the Office of the Governor and with the State Board of Community Colleges in order to develop coordinated rules, policies, and guidelines needed to implement this act.

Section 7. The State Board of Education shall study the effectiveness of this act on the dropout rates and progress toward graduation of students under the age of 18 and shall report the results of this study to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by November 15, 2002.

Section 8. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement this act may adopt temporary rules to implement this act. This section shall continue in effect until all rules necessary to implement this act have become effective as either temporary or permanent rules.

Section 9. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 10. Sections 1 and 2 of this act become effective August 1, 1998. The remainder of this act is effective when it becomes law. Sections 1 and 2 of this act do not apply to any person who holds a valid North Carolina limited learner's permit issued before December 1, 1997, who holds a valid North Carolina learner's permit issued before December 1, 1997, or who is a provisional licensee and holds a valid North Carolina drivers license issued before December 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 769

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H769-ARH-007

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]
Fifth Edition

Senator _____

moves to amend the bill on page 7, line 16, by inserting after the word "Governor" the following phrase:
"and representatives of nonpublic schools";

and on page 7, line 38, by deleting the word "Governor" and by substituting the following phrase:
"Governor, with representatives of nonpublic schools,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 769
Committee Substitute Favorable 4/21/97
Committee Substitute #2 Favorable 5/7/97
Fourth Edition Engrossed 5/29/97
Senate Education/Higher Education Committee Substitute Adopted 6/26/97
Proposed Senate Committee Substitute H769-PCS6316

Short Title: Dropout Prevention/Drivers License. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN STUDENTS WHO DROP OUT OF SCHOOL OR DO NOT MAKE PROGRESS TOWARD GRADUATION SHALL NOT BE ELIGIBLE FOR DRIVERS PERMITS OR LICENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-11, as amended by Chapter 16 of the 1997 Session Laws, reads as rewritten:

"§ 20-11. Issuance of limited learner's permit and provisional drivers license to person who is less than 18 years old.

(a) Process. -- Safe driving requires instruction in driving and experience. To ensure that a person who is less than 18 years old has both instruction and experience before obtaining a drivers license, driving privileges are granted first on a limited basis and are then expanded in accordance with the following process:

(1) Level 1. -- Driving with a limited learner's permit.

(2) Level 2. -- Driving with a limited provisional license.

(3) Level 3. -- Driving with a full provisional license.

A permit or license issued under this section must have a color background or border that indicates the level of driving privileges granted by the permit or license.

(b) Level 1. -- A person who is at least 15 years old but less than 18 years old may obtain a limited learner's permit if the person meets all of the following requirements:

(1) Passes a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school.

(2) Passes a written test administered by the Division.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

(c) Level 1 Restrictions. -- A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.

(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(d) Level 2. -- A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

(3) Passes a road test administered by the Division.

(4) Has a driving eligibility certificate or a high school diploma or its equivalent.

(e) Level 2 Restrictions. -- A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder must be in possession of the license.

(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.

b. When driving to or from work.

c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency

medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver must be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but must be the person seated next to the license holder.

(4) Every person occupying the vehicle being driven by the license holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(f) Level 3. -- A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail.

(g) Level 3 Restrictions. -- The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license.

(h) Out-of-State Exceptions. -- A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the ~~following:~~ following upon the submission of a driving eligibility certificate or a high school diploma or its equivalent:

(1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit and authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division concerning time of driving, supervision, and passenger limitations. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.

(2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and has not been convicted

during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.

(i) Application. -- An application for a permit or license authorized by this section must be signed by both the applicant and another person. That person must be the applicant's parent or guardian if the parent or guardian resides in this State and is qualified to be a supervising driver. In all other circumstances, that person must be an adult approved by the Division.

(j) Duration and Fee. -- A limited learner's permit expires on the eighteenth birthday of the permit holder. A limited provisional license expires on the eighteenth birthday of the license holder. A full provisional license expires on the date set under G.S. 20-7(f). The fee for a limited learner's permit or a limited provisional license is ten dollars ($10.00). The fee for a full provisional license is the amount set under G.S. 20-7(i).

(k) Supervising Driver. -- A supervising driver must be a parent or guardian of the permit holder or license holder if a parent or guardian signed the application for the permit or license. If a parent or guardian did not sign the application, the supervising driver must be the adult who signed the application. A supervising driver must be a licensed driver who has been licensed to drive for at least five years.

(l) Violations. -- It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176.

(m) Insurance Status. -- The holder of a limited learner's permit is not considered a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.

(n) Driving Eligibility Certificate. -- A person who desires to obtain a permit or license issued under this section and who does not have a high school diploma or its equivalent must have a driving eligibility certificate. A driving eligibility certificate must meet the following conditions:

(1) The person who is required to sign the certificate under subdivision (4) of this subsection must show that he or she has determined that one of the following requirements is met:
a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.
b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.
c. The person cannot make progress toward obtaining a high school diploma or its equivalent.
(2) It must be on a form approved by the Division.
(3) It must be dated within 30 days of the date the person applies for a permit or license issuable under this section.
(4) It must be signed by the applicable person named below:
a. The principal, or the principal's designee, of the public school in which the person is enrolled.
b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.
c. The person who provides the academic instruction in the home school in which the person is enrolled.
d. The designee of the board of directors of the charter school in which the person is enrolled.
e. The president, or the president's designee, of the community college in which the person is enrolled.

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 2. G.S. 20-13.2 is amended by adding a new subsection to read:

"(c1) The Division must revoke the permit or license of a person under the age of 18 if the proper school authority notifies the Division that the person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n). Notwithstanding subsection (d) of this section, the length of revocation must last until the person's eighteenth birthday or until the Division restores the permit or license under this subsection. The Division must restore a person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

(1) A high school diploma or its equivalent.
(2) A driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S.

115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter."

Section 3. G.S. 115C-12 is amended by adding a new subdivision to read:

"(27) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. -- The State Board of Education shall issue rules defining what is equivalent to a high school diploma for the purposes of G.S. 20-11. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.

The State Board also shall issue rules for the procedures a person who is or was enrolled in a public school, in a charter school, or in a nonpublic school accredited by the Board must follow and the requirements that person must meet to obtain a driving eligibility certificate. The person required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

a. The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

b. A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.

c. The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

These rules shall provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public school, in a charter school, or in a nonpublic school accredited by the Board no longer meets the requirements for a driving eligibility certificate."

Section 4. G.S. 115D-5 is amended by adding the following new subsection to read:

"(a3) The State Board of Community Colleges shall issue rules for the procedures a person who is or was enrolled in a community college must follow and the requirements that person must meet to obtain a driving eligibility certificate. The person required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.

(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

The rules shall provide for an appeal through the grievance procedures established by the board of trustees of each community college by a person who is denied a driving eligibility certificate. The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a community college no longer meets the requirements for a driving eligibility certificate. The State Board also shall adopt guidelines to assist the presidents of community colleges in their designation of representatives to sign driving eligibility certificates."

Section 5. Article 39 of Chapter 115C of the General Statutes is amended by adding the following new Part:

"Part 4. Miscellaneous Requirements.

"**§ 115C-566. Driving eligibility certificates; requirements.**

The Secretary of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Office of the Governor and representatives of nonpublic schools, shall issue rules for the procedures a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education must follow and the requirements that person must meet to obtain a driving eligibility certificate. The person required under G.S. 20-11(n) to sign the driving eligibility certificate must provide the certificate if he or she determines that one of the following requirements is met:

(1) The person seeking the certificate is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.

(2) A substantial hardship would be placed on the person seeking the certificate or the person's family if the person does not receive the certificate.

(3) The person seeking the certificate cannot make progress toward obtaining a high school diploma or its equivalent.

The rules shall provide for an appeal to an appropriate educational entity by a person who is denied a driving eligibility certificate. The Division of Nonpublic Education also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a home school or in a nonpublic school that is not accredited by the State Board of Education no longer meets the requirements for a driving eligibility certificate."

Section 6. The State Board of Education shall initiate and coordinate meetings with the Division of Nonpublic Education in the Office of the Governor, with representatives of nonpublic schools, and with the State Board of Community Colleges in order to develop coordinated rules, policies, and guidelines needed to implement this act.

Section 7. The State Board of Education shall study the effectiveness of this act on the dropout rates and progress toward graduation of students under the age of 18 and shall report the results of this study to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by November 15, 2002.

Section 8. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement this act may adopt temporary rules to implement this act. This section shall continue in effect until all rules necessary to implement this act have become effective as either temporary or permanent rules.

Section 9. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 10. Sections 1 and 2 of this act become effective August 1, 1998. The remainder of this act is effective when it becomes law. Sections 1 and 2 of this act do not apply to any person who holds a valid North Carolina limited learner's permit issued before December 1, 1997, who holds a valid North Carolina learner's permit issued before December 1, 1997, or who is a provisional licensee and holds a valid North Carolina drivers license issued before December 1, 1997.

EXPLANATION OF HOUSE BILL 769:
Dropout Prevention/Drivers License (5th Edition)

TO: Senate Finance Committee
FROM: Committee Counsel
DATE: June 25, 1997
SPONSOR: Representative Sherrill

House Bill 769 seeks to encourage students to stay in school by making school enrollment a prerequisite to obtaining and keeping a permit or license to drive. The requirements of the bill would become effective August 1, 1998. The bill coordinates with the graduated drivers' license program the General Assembly enacted earlier this session. This act, like the graduated drivers license act, does not apply to a person who holds a valid North Carolina limited learners' permit, a learner's permit, or a provisional drivers' license issued before December 1, 1997.

The bill provides that a person under the age of 18 must have a driving eligibility certificate or a high school diploma or its equivalent before the person may obtain a limited learner's permit, a limited provisional license, or a full provisional license. A driving eligibility certificate must be on a form approved by the Division of Motor Vehicles, must be dated within 30 days of the date when the person applies for a permit or license, and must be signed by an appropriate educational entity who indicates that he or she has determined that (i) the person is currently enrolled in school and is making progress towards graduation, (ii) a substantial hardship would be placed on the person or the person's family if the person does not receive the certificate, or (iii) the person cannot make progress towards graduation.

The bill directs the State Board of Education to adopt rules applicable to all educational entities that define what requirements a person must meet to be considered "making progress towards obtaining a high school diploma or its equivalent." Under the current administrative rules, a student athlete must pass at least five out of six courses each semester to be eligible to participate in interscholastic athletic competition. The rules concerning a driving eligibility certificate probably would be similar to these rules. The Board also must adopt rules for the procedures a person who was or is enrolled in a public school, charter school, or nonprofit school that is accredited by the Board must follow and the requirements that person must meet in order to obtain a certificate. These rules also must provide for an appeal to an appropriate educational entity because the issue of whether a certificate was properly issued or improperly

denied cannot be appealed to the Division of Motor Vehicles. The State Board of Community Colleges must adopt similar rules for students who were or are enrolled in a community college. The Department of Administration, upon consideration of the advice of the Division of Nonpublic Education in the Office of the Governor, must adopt similar rules for students who were or are enrolled in home schools or nonpublic schools that are not accredited by the State Board of Education. The State Board of Education must initiate and coordinate meetings with the Board of Community Colleges and the Division of Nonpublic Education so that the rules, procedures, and guidelines needed to implement the act are coordinated. In addition, Section 8 of the bill gives temporary rulemaking authority to the agencies that must adopt rules to implement this act.

The Division of Motor Vehicles must revoke the permit or license of a person under the age of 18 if the Division is notified by the appropriate school authority that the person has quit school. The revocation would last until the person's eighteenth birthday or until the Division restores the permit or license. (The general law is that revocation is for one year.) The person's license or permit must be restored if the person submits to the Division a high school diploma or its equivalent or a driving eligibility certificate. The restoration fee is set by statute at $25.00.

Section 7 of the bill directs the State Board of Education to study the effectiveness of this act on dropout rates and graduation rates. The report must be completed and submitted to the Joint Legislative Education Oversight Committee and the Fiscal Research Division by November 15, 2002.

NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

LLOYD V. HACKLEY
PRESIDENT

ALAMANCE COMMUNITY COLLEGE
ANSON COMMUNITY COLLEGE
ASHEVILLE-BUNCOMBE
TECHNICAL COMMUNITY COLLEGE
BEAUFORT COUNTY
COMMUNITY COLLEGE
BLADEN COMMUNITY COLLEGE
BLUE RIDGE COMMUNITY COLLEGE
BRUNSWICK COMMUNITY COLLEGE
CALDWELL COMMUNITY COLLEGE
& TECHNICAL INSTITUTE
CAPE FEAR COMMUNITY COLLEGE
CARTERET COMMUNITY COLLEGE
CATAWBA VALLEY
COMMUNITY COLLEGE
CENTRAL CAROLINA
COMMUNITY COLLEGE
CENTRAL PIEDMONT
COMMUNITY COLLEGE
CLEVELAND COMMUNITY COLLEGE
COASTAL CAROLINA
COMMUNITY COLLEGE
COLLEGE OF THE ALBEMARLE
CRAVEN COMMUNITY COLLEGE
DAVIDSON COUNTY
COMMUNITY COLLEGE
DURHAM TECHNICAL
COMMUNITY COLLEGE
ECOMBE COMMUNITY COLLEGE
TTEVILLE TECHNICAL
COMMUNITY COLLEGE
FORSYTH TECHNICAL
COMMUNITY COLLEGE
GASTON COLLEGE
GUILFORD TECHNICAL
COMMUNITY COLLEGE
HALIFAX COMMUNITY COLLEGE
HAYWOOD COMMUNITY COLLEGE
ISOTHERMAL COMMUNITY COLLEGE
JAMES SPRUNT COMMUNITY COLLEGE
JOHNSTON COMMUNITY COLLEGE
LENOIR COMMUNITY COLLEGE
MARTIN COMMUNITY COLLEGE
MAYLAND COMMUNITY COLLEGE
MCDOWELL TECHNICAL
COMMUNITY COLLEGE
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NASH COMMUNITY COLLEGE
PAMLICO COMMUNITY COLLEGE
PIEDMONT COMMUNITY COLLEGE
PITT COMMUNITY COLLEGE
RANDOLPH COMMUNITY COLLEGE
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SAMPSON COMMUNITY COLLEGE
SANDHILLS COMMUNITY COLLEGE
SOUTHEASTERN COMMUNITY COLLEGE
SOUTHWESTERN COMMUNITY COLLEGE
STANLY COMMUNITY COLLEGE
SURRY COMMUNITY COLLEGE
TRI-COUNTY COMMUNITY COLLEGE
VANCE-GRANVILLE
COMMUNITY COLLEGE
WAKE TECHNICAL
COMMUNITY COLLEGE
WAYNE COMMUNITY COLLEGE
WESTERN PIEDMONT
OMMUNITY COLLEGE
KES COMMUNITY COLLEGE
SON TECHNICAL
COMMUNITY COLLEGE
NC CENTER FOR APPLIED
TEXTILE TECHNOLOGY

May 27, 1997

The Honorable Wilma M. Sherrill
North Carolina House of Representatives
2215 Legislative Building
Raleigh, NC 27601-1096

Dear Representative Sherrill:

As a representative of the North Carolina Community College System, I commend you for introducing H.B. 769. The System office supports H.B. 769 with an amendment that would give the System office the opportunity to develop guidelines for reporting the appropriate information to the Department of Motor Vehicles. It is understood that these guidelines will provide the latitude for local campuses to address their own unique logistical problems, and that the primary responsibility for collecting the information will fall on the individual student.

Due to the new semester conversion for Community Colleges during 1997-98, it is requested that the completion of these guidelines be delayed until June 30, 1998.

If you have any questions, please call me or Jerry Owens in the System office (733-7051; ext. 711 or 314, respectively).

Sincerely,

Barry W. Russell
Senior Vice President

NC ASSOCIATION OF SCHOOL ADMINISTRATORS

Mal Brown, *President*
Clyde Erwin High School
Asheville, NC 28806

Janet H. Crotts
Executive Director

Julie C. Campbell
Membership Services Director

Barbara Walker
Office Manager

MEMORANDUM

To: Representative Wilma Sherrill

From: Jan Crotts, Executive Director, NCASA

Re: H769 Dropout Prevention/Drivers License

Thank you for introducing House Bill 769. I just want you to know that the NC Association of School Administrators supports the bill and will help to see that it passes into law.

Hopefully, this will be one more step toward seeing that our youth do not drop out of school.

NORTH CAROLINA SCHOOL BOARDS ASSOCIATION

"PUBLIC EDUCATION: NORTH CAROLINA'S BEST INVESTMENT"

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Robert Berlam, Ed.D.
Director of Governmental Relations

May 12, 1997

Representative Wilma Sherrill
Room 2215
Legislative Building
Raleigh, NC 27601-1096

Dear Representative Sherrill:

The North Carolina School Boards Association shares your desire to increase student motivation toward greater academic achievement. We are also concerned over the level of school dropouts. Any reasonable legislation that attempts to improve these two situations certainly will have the support of every local school board member.

Toward these objectives, NCSBA supports your legislation HB769 Dropout Prevention/Drivers License. We understand that it will require students to continue to make progress toward graduation in order to gain or maintain a drivers license. Hopefully, this provision will increase their awareness and motivation toward their academic achievement. It places a focus on education as a key to the future of our children.

Should the bill become law, we will work with the State Board of Education to develop meaningful and workable guidelines to define progress. Please call if we can be of assistance.

Sincerely,

Dr. Robert Berlam,
Director of Governmental Relations

cc: Dr. Ed Dunlap, Jr.

RAB/ds

NCAE
North Carolina Association of Educators, Inc.

700 South Salisbury Street
PO Box 27347
Raleigh, NC 27611-7347

(919) 832-3000
1-800-662-7924

President
Cecil S. Banks
President-Elect
Joyce H. Elliott
Executive Director
John I. Wilson
Associate Executive Director
William T. Newkirk, Sr.

May 14, 1997

The Honorable Wilma Sherrill
North Carolina House of Representatives
2215 Legislative Building
Raleigh, North Carolina 27601

Dear Representative Sherrill:

The North Carolina Association of Educators commends your leadership on House Bill 769 - Dropout Prevention/Drivers License. We support the bill and its tying together a student's responsibility for academic progress and a drivers license.

Please let us know if we can assist you in the passage of this legislation.

Sincerely,

Cecil S. Banks
President

NORTH CAROLINA CITIZENS
FOR BUSINESS AND INDUSTRY
[redacted] Hillsborough Street, P.O. Box 2508, Raleigh,
North Carolina 27602, Telephone 919/836-1400

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April 29, 1997

The Honorable Wilma Sherrill
Representative
Room 2215
Legislative Building
Raleigh, North Carolina 27601-1096

Dear Representative Sherrill:

North Carolina Citizens for Business and Industry is pleased to endorse your driver's license bill which, we believe, would go a long way in encouraging more of our young people to stay in school and to continue to make academic progress.

Our State's dropout rate is unacceptably high. Too many of our students do just enough work to get a diploma. However, many are unprepared for today's job market. Your legislation will help motivate students to do better so they can keep or get their driver's license.

We applaud this legislation as another aspect of the efforts to improve public education, and we urge the General Assembly to enact it.

Sincerely,

Phil

Phillip J. Kirk, Jr.
President

PJKjr/lw

FAX: 919/836-1425

AFT, AFL-CIO **American Federation of Teachers / North Carolina**

Sarah K. Stewart, *President* | Bill McInnis, *Vice President* | Larry Hauser, *Finance Officer* | Thomas Hefner, *Secretary*

May 7, 1997

The Honorable Wilma Sherrill
NC House of Representatives
Legislative Building, Room 2215

Dear Representative Sherrill:

On behalf of the members of the American Federation of Teachers in North Carolina, I would like to commend you for your sponsorship of House Bill 769. As an organization, we have long been concerned about what happens to students as a result of being able to have a driver's license at age 16. Many either seriously neglect their school work or drop out of school completely. Your bill makes that a far less desirable option. We fully support the graduated driver's license bill that was signed into law and believe that this is a good companion piece.

All of us recognize that there may be situations in which the general provisions of this bill could cause undue hardship; however, you have made allowance for those extreme cases. We also know that some students who are working very hard may not be able to show measurable gains toward graduation, and you have also allowed for those unusual cases.

We believe that this is a strong bill that will send the message that school is important and that we expect every student not only to attend but to have graduation as a goal as well. Thank you for your part in establishing that school attendance is serious business.

Sincerely,

Sarah Stewart

405 B W. Franklin Street • Chapel Hill, NC 27516-2314 • (919) 933-7598 • Fax (919) 942-2052

5029 Falls of Neuse Road
Suite 214
Raleigh, NC 27609
(919) 874-0520 tel.
(919) 874-0507 fax
penc@ntwrks.com

PENC
Professional
Educators *of*
North Carolina, Inc.

"Each Child Belongs to All of Us"

May 5, 1997

The Honorable Wilma M. Sherrill
North Carolina House of Representatives
Room 2215, Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925

Dear Representative Sherrill

I am writing to lend our organizational support to your bill HB 576. Our statewide association of over 5,000 educators supports your efforts to use the NC driver license as an incentive for students to successfully complete high school. We especially appreciate your willingness to recognize our concern that hardship cases be considered on an individual basis. We support your balanced legislation and appreciate your leadership on this important issue.

Sincerely,

Amy Van Oostrum
Executive Director

North Carolina PTA

Branch of The National PTA
3501 Glenwood Avenue
Raleigh, North Carolina 27612-4934
(919) 787-0534

May 18, 1997

The Honorable Wilma M. Sherrill
State Legislative Building
Raleigh, NC 27601-1096

Dear Representative Sherrill:

I am pleased to inform you that the Executive Committee of the North Carolina PTA Board of Managers agreed to support House Bill 769 -- Dropout Prevention/Drivers License at our meeting this afternoon in a unanimous vote. We felt the provisions of the bill would be helpful in encouraging youth to complete their high school education by removing their privilege to obtain and hold a drivers license if they drop out of school. In today's society, it is extremely important for our youth to be adequately educated, and this law would provide additional incentives to strive for that diploma. We believe this bill has the potential to grab the attention of those youth who may consider dropping out and serve as that extra incentive that will cause them to complete their education. We support many measures and programs that attempt to keep youth in school.

We realize there may be a need for exceptions to the provisions of this law from time to time in certain situations. The provisions to exempt youth under specified circumstances were seen as sufficient safeguards for those who might experience undue hardships as a result of the passage of the law.

Thank your for your efforts to encourage our youth to remain in school. We gladly support this attempt to further strengthen the commitment to education in North Carolina. Please let me know if there are additional ways we may assist you.

Sincerely,

Sandy Carmany

Sandy Carmany
President

cc: Jim Polk, Vice President for Legislative Activity
Dr. Sam Haywood, NC PTA Board of Managers

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

April 21, 1997

JAMES B. HUNT JR.
GOVERNOR

The Honorable Wilma M. Sherrill
North Carolina House of Representatives
Room 2215
Legislative Building
Raleigh, North Carolina 27601-1096

Dear Wilma:

As you know, our young people are our most precious resource. It is important that we focus our efforts on giving our students the best education possible. I am glad we are working together to improve our schools, support our teachers and ensure all young North Carolinians have an opportunity to succeed.

Your proposal to tie driver licenses to graduation and educational progress, contained in HB 769, has great merit. We want our teen-agers to realize that growing older means more than gaining privileges. It means meeting responsibilities—working hard, studying and being good citizens.

To gain the full benefits of our educational system, we want as many young people as possible to stay in school, to learn and to get their diploma. Your bill would certainly help encourage them in this endeavor. I endorse your effort to enact HB 769 and will sign it if your effort is successful.

My warmest personal regards.

Sincerely,

James B. Hunt Jr.

JBH/fs

NORTH CAROLINA
STATE BOARD OF EDUCATION
Education Building
301 North Wilmington Street
Raleigh, North Carolina 27601-2825

May 8, 1997

The Honorable Wilma Sherrill
NC House of Representatives
2215 Legislative Building
Raleigh, NC 27601-1096

Dear Rep. Sherrill:

The State Board of Education discussed your bill, HB 769, Dropout Prevention/Drivers License at its regular meeting May 1, 1997. The Board is pleased that you have taken the lead in this initiative to encourage students to stay in school and make progress toward graduation as a requirement to obtain a drivers license.

Attached is a resolution that the Board adopted unanimously in support of HB 769. The Board will follow with interest this bill.

Thank you for all you do to support our public schools. Please let us know when we can be of assistance.

Sincerely,

Jay M. Robinson
Chairman

Attachment

Effective Practices Section
February 4, 1997

DROPOUT STATISTICS

National Statistics on Consequences (from "School Dropouts: New Information About An Old Problem," Wendy Schwartz, ERIC Clearinghouse on Urban Education, New York, NY, Digest No. 109, 1995)

- "In 1992 dropouts earned slightly under $13,000 on average, about one-third less than high school graduates."

- Regarding lifetime wages, it is estimated that the "1993 dropout pool will earn $212,000 less than high school graduates, and $812,000 less than college graduates."

- In "the last 20 years, the earnings level for dropouts doubled while it nearly tripled for college graduates, a trend that is likely to intensify in the future."

- "Dropouts comprise nearly half of the heads of households on welfare, and a similar percentage of the prison population."

North Carolina Statistics on Consequences

- In 1995, 58.2% of the felons in North Carolina's state prisons reported not having completed high school. (N.C. Department of Corrections, Research Bulletin, Issue No. 38, March 27, 1996)

- In 1990 slightly over 56% of North Carolina's adult heads of household in AFDC programs had less than a high school diploma. (N.C. Division of Social Services, DHR, Initial State Evaluation for the Jobs Program, February, 1990)

STATE BOARD OF EDUCATION RESOLUTION ON DROPOUT PREVENTION/DRIVERS LICENSE

WHEREAS, the Constitution of the State of North Carolina establishes free public schools to provide equal opportunities for all, and

WHEREAS, over 18,000 students in grades 7-12 dropped out of school in 1995-96 indicating our schools are loosing too many students, and

WHEREAS, the State Board of Education believes that all children can learn and should be provided opportunities to achieve in school, and

WHEREAS, dropouts nationally earn approximately one-third less than high school graduates, and

WHEREAS, students should make progress toward graduation to gain the knowledge and skills necessary to be good citizens and employees, and

WHEREAS, requiring students to make progress toward graduation in order to obtain a drivers license will encourage students to stay in school;

NOW THEREFORE, be it resolved that the State Board of Education supports House Bill 769, "An Act to Provide that Certain Students Who Drop Out of School or Do Not Make Progress Toward Graduation Shall Not Be Eligible for Drivers Permits or Licenses."

Jay M. Robinson

Chairman, State Board of Education

May 1, 1997

Date

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 956*

Short Title: Venture Capital Investment Incentive. (Public)

Sponsors: Senators Hoyle, Cooper, and Odom.

Referred to: Rules and Operations of the Senate.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE CAPITAL INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN INSURANCE PREMIUMS TAX CREDIT FOR THESE INVESTMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53A-35 through G.S. 53A-37 are designated Part 1 of Article 3 of Chapter 53A of the General Statutes, entitled "General Provisions" and the remainder of Article 3 of Chapter 53A of the General Statutes is designated Part 2, entitled "North Carolina Enterprise Corporations".

Section 2. Article 3 of Chapter 53A of the General Statutes, as amended by this act, is further amended by adding a new Part to read:

"Part 3. Certified North Carolina Capital Companies.

"**§ 53A-70. Requirements for certification of a certified North Carolina capital company.**

(a) Initial Certification. -- In order to be initially certified as a certified North Carolina capital company, a company must satisfy the following requirements:

(1) It is a partnership, corporation, trust, or limited liability company, whether for-profit or nonprofit, whose primary business activity is the investment of cash in approved business ventures.

(2) Its cash, marketable securities, and other liquid assets equal at least five hundred thousand dollars ($500,000).

(3) Its officers and its board of directors, partners, trustees, or managers are thoroughly acquainted with the requirements of this Part.

(4) No insurance company or affiliate of an insurance company is a managing general partner of the certified North Carolina capital company or controls the direction of investments of the certified North Carolina capital company. This subdivision does not preclude an insurance company or any other party from exercising its legal rights and remedies, which may include interim management of a certified North Carolina capital company, in the event that a certified North Carolina capital company is in default of its statutory obligations or its contractual obligations to the insurance company or other party.

(b) Continuing Certification. -- To remain certified as a certified North Carolina capital company, the company must satisfy the following requirements:

(1) Within three years after the date it was initially certified, at least thirty percent (30%) of the certified capital invested in the company must be placed in approved investments.

(2) Within five years after the date it was initially certified, at least fifty percent (50%) of the certified capital invested in the company must be placed in approved investments.

(3) It shall not invest in a single approved business venture an amount that is more than fifteen percent (15%) of the total certified capital under the company's management at the time of the investment.

(4) No insurance company or affiliate of an insurance company is a managing general partner of the certified North Carolina capital company or controls the direction of investments of the certified North Carolina capital company. This subdivision does not preclude an insurance company or any other party from exercising its legal rights and remedies, which may include interim management of a certified North Carolina capital company, in the event that a certified North Carolina capital company is in default of its statutory obligations or its contractual obligations to the insurance company or other party.

(c) Permanent Certification. -- A certified North Carolina capital company that has satisfied the requirements of G.S. 53A-70(b) and has invested all of its certified capital in approved investments, as demonstrated by its most recent financial statement and report filed in accordance with G.S. 53A-71, qualifies for permanent certification and is no longer required to obtain continuing certification as required in G.S. 53A-71. A certified North Carolina capital company that has qualified for permanent certification must continue to submit annual financial statements and reports under G.S. 53A-71 for three years after it qualifies for permanent certification.

"**§ 53A-71. Procedure for initial and continuing certification; reports.**

(a) Initial Certification. -- In order to be initially certified as a certified North Carolina capital company, a company must file an application with the Department and pay the initial certification fee. The application shall include any information

and supporting documents required by the Secretary of State to determine whether the company qualifies for initial certification. Within 60 days after an application is filed, the Department shall determine whether the applicant qualifies for initial certification and shall either issue the certification or shall refuse the certification and notify the applicant in detail of the grounds for the refusal, including suggestions for the removal of those grounds.

The Department shall review and approve or reject applications in the order submitted. If more than one application is received by the Department on the same day, all applications received on that day shall be reviewed and approved simultaneously, except in the case of incomplete applications or applications for which additional information is requested by the Department and is not supplied by the applicant within the allowable time limits established by the Department. If more than one applicant is certified on the same day, the Department shall ensure that all applicants certified on that day are notified of certification at the same time.

(b) Continuing Certification. -- A certified North Carolina capital company that has not qualified for permanent certification must, in order to remain certified, submit an annual application for continued certification and pay the annual review fee. The request shall include any information and supporting documents required by the Secretary of State to determine whether the company qualifies for continued certification.

The Department shall conduct an annual review of each certified North Carolina capital company that has not qualified for permanent certification to determine if the company is in compliance with the requirements for initial and continuing certification and to ensure that the company's investments are in compliance with this Part. The review shall be based upon the company's financial statements and other information submitted in accordance with this section.

(c) Application Forms; Fees. -- Applications for initial and continuing certification under this section shall be in the form required by the Secretary of State. The Secretary of State shall prepare blank forms for the applications. Each application shall be signed by the owners, a manager, or an executive officer of the company. There shall be annexed to the application the affirmation of the person making the application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.' A person who submits a false application is guilty of a Class 1 misdemeanor.

The Secretary of State shall charge an applicant a fee of one thousand dollars ($1,000) for initial certification as a certified North Carolina capital company and a fee of one thousand dollars ($1,000) for annual review for continuing certification as a certified North Carolina capital company. Fees collected under this section shall be applied to the cost of administering this Part.

(d) Periodic Reports. -- Each certified North Carolina capital company shall provide the Department an annual audited financial statement and report that includes an opinion of an independent certified public accountant. The audit shall address the methods of operation and conduct of the business of the company to

determine whether the company has complied with this Part and whether the cash invested in the company has been invested as required by this Part. The audit shall also determine whether each business in which the company has invested is an approved business venture as defined in this Article. In addition, each certified North Carolina capital company shall provide the Department a midyear, unaudited update of its annual financial statement and report. The reports and updates shall be in the form prescribed by the Secretary of State and shall include any information required by the Secretary of State about the company and about the approved business ventures in which it has invested.

A certified North Carolina capital company that has not qualified for permanent certification shall submit the annual financial statement and report and the midyear update on the due dates specified by the Department. A certified North Carolina capital company that has qualified for permanent certification is no longer required to submit midyear updates but shall continue to submit the annual financial statement and report on the due dates specified by the Department for three years after the company qualifies for permanent certification. Thereafter, no additional financial statements and reports are required under this subsection.

"§ 53A-72. Distributions; maximum interest rate.

(a) Distributions. -- A certified North Carolina capital company may make qualified distributions at any time. A certified North Carolina capital company may, without restriction, make distributions and payments to debt holders with respect to debt owed them by the company, but no distributions or payments may be made to an equity holder, or any of its affiliates, that is entitled to a credit under Article 8C of Chapter 105 of the General Statutes until the certified North Carolina capital company has qualified for permanent certification. A certified North Carolina capital company may make other distributions only after it has qualified for permanent certification.

(b) Maximum Interest Rate. -- A certified North Carolina capital company shall not charge interest on a senior, secured loan at an annual rate that exceeds the prime rate plus three percent (3%).

"§ 53A-73. Tax credits.

(a) Credit Allowed. -- A person who invests cash in a certified North Carolina capital company is entitled to a tax credit as provided in Article 8C of Chapter 105 of the General Statutes but, notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General Statutes, is not allowed a tax credit under that Division for the investment. In addition, notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General Statutes, a certified North Carolina capital company is not allowed a tax credit under that Division for its investments.

(b) Allocation of Credits. -- The Department shall allocate the total amount of credit allowed pursuant to G.S. 105-228.10E among taxpayers as provided in this section. A certified North Carolina capital company may apply for allocation of credits on behalf of its investors no earlier than the first business day after it is certified. The application shall be in the form required by the Secretary of State and shall provide all of the following:

(1) The name of each investor.
(2) The amount each investor has committed to invest in the company.
(3) Proof that the investor has committed to invest the funds subject to allocation of the applicable credits pursuant to this section.
(4) The maximum amount of credit the investment would entitle the investor to under G.S. 105-228.10C for the current taxable year and the following nine taxable years.
(5) Any other information required by the Secretary of State.

Upon receipt of a completed application, the Department shall determine the amount of available credit not yet allocated for each taxable year specified in the application. Within seven business days after receipt of the application, the Department shall allocate to the North Carolina capital company, on behalf of the investors named in the application, the total amount of credit applied for in the application, but only to the extent of available credit not yet allocated for each taxable year. The Department's allocations of credit under this section shall be in writing.

The Department shall allocate available credit to applicants in the order the applications are received. If more than one certified North Carolina capital company submits a completed application on the same day, the Department shall make the allocations to those applicants simultaneously. If the amount of credit applied for in the simultaneous applications exceeds the amount of available credit not yet allocated for a taxable year, the Department shall allocate the available credit for that taxable year among the simultaneous applicants on a pro rata basis in proportion to the amount of credit applied for by each.

"**§ 53A-74. Decertification of certified North Carolina capital company.**

(a) Grounds for Decertification. -- Any material violation of this Part shall be grounds for decertification under this section.

(b) Procedure for Decertification. -- If the Department determines that a certified North Carolina capital company is not in compliance with any requirement for continuing certification, it shall, by written notice, inform the officers of the company and the board of directors, manager, trustees, or general partners that the company will be decertified in 120 days after the date the notice is mailed unless the company corrects the deficiencies to bring itself in compliance with the requirements for certification. At the end of the 120-day grace period, if the certified North Carolina capital company is still not in compliance, the Department shall decertify the company and send a notice of decertification to the company and to the Department of Revenue and the Department of Insurance.

(c) Effect of Decertification. -- If a certified North Carolina capital company is decertified, no further tax credits for an investment in the company are allowed pursuant to G.S. 105-228.10D.

"**§ 53A-75. Rules; report.**

The Secretary of State may adopt rules to implement this Part. The Secretary of State shall report to the Legislative Research Commission by October 1 of each odd-numbered year and by February 1 of each even-numbered year the number of

certified North Carolina capital companies certified under this Part, the date each company was created, the amount and percentage of certified capital invested by each company, the amount of tax credits allocated to each company, and any other information requested by the Legislative Research Commission."

Section 3. G.S. 53A-37 reads as rewritten:

"**§ 53A-37. Definitions.**

The following definitions apply in this Article:

(1) Affiliate of a certified North Carolina capital company or insurance company. -- Any of the following:

a. A person who directly or indirectly beneficially owns (whether through rights, options, convertible interests, or otherwise), controls, or holds power to vote ten percent (10%) or more of the outstanding voting securities or other ownership interests of the company.

b. A person ten percent (10%) or more of whose outstanding voting securities or other ownership interests are, directly or indirectly, beneficially owned (whether through rights, options, convertible interests, or otherwise), controlled or held with power to vote by the company.

c. A person who directly or indirectly controls, is controlled by, or is under common control with the company.

d. A partnership in which the company is a general partner.

e. A person who is an officer, a director, or an agent of the company, or is an immediate family member of an officer, a director, or an agent of the company.

(2) Approved business venture. -- A business that satisfies all of the following conditions as of the time of a certified North Carolina capital company's first investment in the business:

a. It is headquartered in this State, it operates primarily in this State or does substantially all of its production in this State, and it employs a majority of its employees in this State.

b. It has no more than 300 employees and, during its most recent fiscal year, it had gross revenues of no more than seven million dollars ($7,000,000) on a consolidated basis as determined in accordance with generally accepted accounting principles.

c. It is not a subsidiary of another corporation.

d. It satisfies the conditions established in G.S. 105-163.013(b)(3) through (6).

(3) Approved investment. -- The investment of cash by a certified North Carolina capital company in such a manner as to acquire capital in a business that, at the time of the first investment in the business by a certified North Carolina capital company, was an approved business venture. The capital acquired may be any debt,

equity, or hybrid security, whether secured or unsecured, of any nature, including a debt instrument or security that has the characteristics of debt but provides for conversion into equity or equity participation instruments such as options or warrants.

(4) Business. -- A corporation, a partnership, an association, a limited liability company, or a sole proprietorship operated for profit.

(5) Certified capital. -- The cash invested in a certified North Carolina capital company, either in the form of equity or debt capital, during the 365-day period after the company has been initially certified as provided in Part 3 of this Article. If the certified capital is in the form of debt capital, the debt instrument issued by the certified North Carolina capital company, at par value or a premium, must have an original maturity date of at least five years after the date of issuance and a repayment schedule that is no faster than a level principal amortization.

(6) Certified North Carolina capital company. -- A partnership, corporation, trust, or limited liability company whose primary business activity is the investment of cash in approved business ventures and that is certified by the Secretary of State as provided in Part 3 of this Article.

(7) Department. -- The Department of the Secretary of State.

~~(2)~~ (8) Equity security. -- Common stock, preferred stock, an interest in a partnership, subordinated debt, or a warrant that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.

(9) Insurance company. -- Defined in G.S. 58-1-5.

~~(3)~~ (10) Mezzanine finance. -- An investment in the equity securities or subordinated debt of a Qualified North Carolina Business.

(11) Person. -- An individual, a corporation, a partnership, an association, a trust, a limited liability company, or another legal entity.

(12) Qualified distribution. -- A distribution or payment to equity owners of a certified North Carolina capital company or to their shareholders, officers, directors, partners, members, managers, employees, or affiliates, in connection with any of the following:

a. Reasonable costs and expenses of forming, syndicating, managing, and operating the company, including management fees.

b. An increase in State or federal taxes, penalties, or interest of the company's equity owners to the extent the increase relates to the ownership, management, or operation of the company.

~~(4)~~ (13) Qualified North Carolina Business. -- A business whose headquarters and principal business operations are located in

North Carolina and which, together with its affiliates on a consolidated basis, had gross income during the immediately preceding fiscal year, determined in accordance with generally accepted accounting principles without taking into account extraordinary items, of less than forty million dollars ($40,000,000).

~~(5)~~ (14) Rural areas. -- Any county in North Carolina which does not include within its boundaries a city, as defined by G.S. 160A-1(2), with a population greater than one percent (1%) of the population of North Carolina.

~~(6)~~ (15) Security. -- A security as defined in G.S. 78A-2(11).

~~(7)~~ (16) Subordinated debt. -- Indebtedness that is or will be subordinated to other indebtedness of the issuer. Subordinated debt may be convertible into common stock, preferred stock, or an interest in a partnership.

~~(8)~~ (17) Traditional ~~Financial Institutions.~~ financial institutions. -- Corporations or associations chartered under ~~Chapters~~ Chapter 53 or 54B of the General Statutes."

Section 4. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 8C.
"Premiums Tax Credit for Investments in
North Carolina Small Businesses.

"§ 105-228.10A. Purpose.

The purpose of this Article is to stimulate a substantial increase in venture capital investments in North Carolina by providing an incentive for insurance companies to invest in certified North Carolina capital companies.

"§ 105-228.10B. Definitions.

The following definitions apply in this Article:

(1) Certified capital. -- Defined in G.S. 53A-37.

(2) Certified North Carolina capital company. -- A certified North Carolina capital company created under Article 3 of Chapter 53A of the General Statutes.

"§ 105-228.10C. Premiums tax credit for investments.

(a) Credit. -- A person who invests certified capital in a certified North Carolina capital company is allowed against the gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8 a credit equal to the amount of certified capital invested by the taxpayer during the taxable year, subject to the limitations provided in this Article. To claim the credit allowed by this section, the taxpayer must provide the Secretary a copy of the certified North Carolina capital company's application for allocation of credit under G.S. 53A-73, a copy of the Secretary of State's written allocation of credit under G.S. 53A-73, and any other supporting documentation the Secretary requires.

(b) Limitations. -- The taxpayer may not take the entire credit for the taxable year the investment is made, but may take up to ten percent (10%) of the aggregate credit

allowed under this section for that taxable year and for each succeeding taxable year until the entire credit has been used. The amount of credit taken may not exceed the taxpayer's gross premiums tax liability for a taxable year reduced by the sum of all credits allowable except payments of tax by or on behalf of the taxpayer. Subject to the ten percent (10%) limitation, any unused portion of the credit may be carried forward to the five succeeding taxable years.

(c) Transfer of Credit. -- A taxpayer may transfer a credit allowed under this section to another taxpayer. The taxpayer must apply for the approval of the Commissioner of Insurance before transferring the credit. The application shall be in the form prescribed by the Commissioner. The application shall identify the proposed transferor and transferee, state the transferor's tax credit balance before and after the proposed transfer, state the amount of the credit to be transferred and the proposed date of the transfer, and include any other information the Commissioner requires regarding the proposed transfer.

The Commissioner of Insurance shall approve the proposed transfer if the application is accurate and complete and the Commissioner determines that the proposed transfer will not have an adverse effect on either taxpayer or their policyholders or shareholders. Within 60 days after receiving an application, the Commissioner shall notify the applicant that the proposed transfer has been approved or disapproved.

The Commissioner of Insurance shall maintain records and monitor all transferred credits to ensure that transfers do not result in multiple parties claiming the same credit. The Commissioner shall provide the Secretary complete records of all transferred credits.

"**§ 105-228.10D. Effect of decertification.**

If a certified North Carolina capital company is decertified under G.S. 53A-74, no tax credit or carryforward of a tax credit for an investment in the company is allowed under this Article for a taxpayer's taxable year beginning in the calendar year the decertification occurred or for subsequent taxable years. Decertification of a certified North Carolina capital company does not affect a tax credit allowed under this Article for a taxpayer's taxable year that began before the calendar year in which the decertification occurred.

"**§ 105-228.10E. Annual ceiling; cap.**

(a) Annual Ceiling. -- The total amount of tax credits that may be taken by all taxpayers under this Article in a taxable year may not exceed fifteen million dollars ($15,000,000). This amount shall be allocated among taxpayers for each taxable year as provided in G.S. 53A-73.

(b) Cap. -- The amount of credit allowed a taxpayer under this Article for a taxable year may not exceed ten percent (10%) of the annual ceiling for that year."

Section 5. G.S. 105-228.8(e) reads as rewritten:

"(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums. For purposes of this section, seventy-five percent

(75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall not be a special purpose obligation or assessment or a dedicated special purpose tax within the meaning of this subsection. The credit allowed by G.S. 105-228.10C shall not be considered in determining the amount of premium taxes imposed by this State."

Section 6. G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term 'insurance company' means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical, or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term 'insurance company' does not include a company regulated under Article 67 of this Chapter. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) The additional taxes imposed by G.S. ~~105-228.8 and the~~ 105-228.8.

(2) The additional local fire and lightning tax imposed by G.S. ~~105-228.5(d)(4) shall be disregarded.~~ 105-228.5(d)(4).

(3) The credit allowed by G.S. 105-228.10C."

Section 7. The title of Chapter 53A of the General Statutes reads as rewritten:

"Chapter 53A.

"Business Development ~~Corporations and North Carolina Capital Resource Corporations.~~ and Access to Capital."

Section 8. The title of Article 3 of Chapter 53A of the General Statutes reads as rewritten:

"ARTICLE 3.

"North Carolina Enterprise ~~Corporations.~~ Corporations and Certified North Carolina Capital Companies."

Section 9. G.S. 53A-35 and G.S. 53A-47 are repealed.

Section 10. G.S. 53A-36 reads as rewritten:

"**§ 53A-36. Legislative findings and purpose.**

(a) The General Assembly finds ~~and declares~~ that there exists in ~~the State of~~ North Carolina a serious shortage of mezzanine finance capital and credit available for investment in rural ~~areas~~ areas and other areas in the State. This shortage of mezzanine finance capital and credit is severe throughout ~~the rural areas of~~ the State, has persisted for a number of years, and constitutes a grave threat to the welfare and prosperity of all residents of the State. The lack of access to capital prevents North Carolina businesses from creating jobs that would otherwise enhance the economy of the State and provide livelihoods for North Carolina citizens.

(b) The General Assembly finds ~~and declares further~~ that private enterprise and existing federal and State governmental programs have not adequately alleviated the

severe shortage of mezzanine finance capital and credit available for investments in ~~rural areas in the~~ this State.

(c) The General Assembly finds ~~and declares~~ that it is a matter of grave public necessity that North Carolina Enterprise Corporations be authorized to be created and ~~to be~~ empowered to alleviate these severe shortages of mezzanine finance capital and credit for investment in rural areas of the State. North Carolina Enterprise Corporations shall help eliminate barriers to rural economic development by providing mezzanine finance capital and credit, and other types of financing as appropriate, to businesses in rural areas that have been unable to obtain sufficient financing through traditional financial institutions.

(d) The General Assembly finds that it is a matter of grave public necessity that certified North Carolina capital companies be authorized to be created as venture capital companies whose primary business activity is the investment of cash in small North Carolina business ventures that are in need of capital for survival, expansion, new product development, or similar purposes."

Section 11. G.S. 53A-38(a) reads as rewritten:

"(a) One or more persons, a majority of whom are residents of this State, may, by filing a certificate of incorporation as provided in subsection (b), incorporate a North Carolina Enterprise Corporation under the provisions of this ~~Article.~~ Part."

Section 12. G.S. 53A-41 reads as rewritten:

"**§ 53A-41. Governing law.**

Except as otherwise provided in this ~~Article,~~ Part, a North Carolina Enterprise Corporation shall be governed by Chapter 55 of the General Statutes."

Section 13. G.S. 53A-42 reads as rewritten:

"**§ 53A-42. Powers.**

A North Carolina Enterprise Corporation created under this ~~Article~~ Part shall have all the powers conferred on business corporations by Chapter 55 of the General Statutes."

Section 14. Sections 4, 5, and 6 of this act and G.S. 53A-73, as enacted by Section 2 of this act, become effective for taxable years beginning on or after January 1, 1997, and apply to investments made on or after that date. The remainder of this act is effective when this act becomes law. An application for initial certification as a North Carolina capital company pursuant to G.S. 53A-71 may not be submitted until the first Monday that falls at least 45 days after this act becomes law. G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as enacted by this act, are repealed effective for investments made on or after January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 956*
Proposed Finance Committee Substitute S956-CSLC-7/22
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Venture Capital Investment Incentive. (Public)

Sponsors: Senators

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO STIMULATE A SUBSTANTIAL INCREASE IN VENTURE CAPITAL INVESTMENTS IN NORTH CAROLINA BY ALLOWING AN INSURANCE PREMIUMS TAX CREDIT FOR THESE INVESTMENTS.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the Venture Capital Investment Incentive Act of 1997.

Section 2. G.S. 53A-35 through G.S. 53A-37 are designated Part 1 of Article 3 of Chapter 53A of the General Statutes, entitled "General Provisions" and the remainder of Article 3 of Chapter 53A of the General Statutes is designated Part 2, entitled "North Carolina Enterprise Corporations".

Section 3. Article 3 of Chapter 53A of the General Statutes, as amended by this act, is further amended by adding a new Part to read:

"Part 3. Certified North Carolina Capital Companies.

"§ 53A-70. Requirements for certification of a certified North Carolina capital company.

(a) Initial Certification. -- In order to be initially certified as a certified North Carolina capital company, a company must satisfy the following requirements:

(1) It is a partnership, corporation, trust, or limited liability company, whether for-profit or nonprofit, whose primary business activity is the investment of cash in approved business ventures.

(2) Its cash, marketable securities, and other liquid assets equal at least five hundred thousand dollars ($500,000).

(3) Its officers and its board of directors, partners, trustees, or managers have certified that they have a copy of the Venture Capital Investment Incentive Act of 1997 and any applicable rules.

(4) No insurance company or affiliate of an insurance company is a managing general partner of the certified North Carolina capital company or controls the direction of investments of the certified North Carolina capital company. This subdivision does not preclude an insurance company or any other party from exercising its legal rights and remedies, which may include interim management of a certified North Carolina capital company, in the event that a certified North Carolina capital company is in default of its statutory obligations or its contractual obligations to the insurance company or other party.

(5) It agrees that, because the tax credits provided by law are considered an investment by the State of North Carolina, it will pay to the State an investment return calculated as provided in G.S. 53A-75. In addition, it agrees that its contracts with investors will provide for the company's payment of this investment return to the State.

(b) Continuing Certification. -- To remain certified as a certified North Carolina capital company, the company must satisfy the following requirements:

(1) Within two years after the date it was initially certified, at least twenty-five percent (25%) of the certified capital invested in the company must be placed in approved investments.

(2) Within three years after the date it was initially certified, at least forty percent (40%) of the certified capital invested in the company must be placed in approved investments.

(3) Within four years after the date it was initially certified, at least fifty percent (50%) of the

certified capital invested in the company must be placed in approved investments.

(4) It shall not invest in a single approved business venture an amount that is more than fifteen percent (15%) of the total certified capital under the company's management at the time of the investment.

(5) No insurance company or affiliate of an insurance company is a managing general partner of the certified North Carolina capital company or controls the direction of investments of the certified North Carolina capital company. This subdivision does not preclude an insurance company or any other party from exercising its legal rights and remedies, which may include interim management of a certified North Carolina capital company, in the event that a certified North Carolina capital company is in default of its statutory obligations or its contractual obligations to the insurance company or other party.

(c) Permanent Certification. -- A certified North Carolina capital company that has satisfied the requirements of G.S. 53A-70(b) and has invested all of its certified capital in approved investments, as demonstrated by its most recent financial statement and report filed in accordance with G.S. 53A-71, qualifies for permanent certification and is no longer required to obtain continuing certification as required in G.S. 53A-71. A certified North Carolina capital company that has qualified for permanent certification must continue to submit annual financial statements and reports under G.S. 53A-71 for three years after it qualifies for permanent certification.

"§ 53A-71. Procedure for initial and continuing certification; reports.

(a) Initial Certification. -- In order to be initially certified as a certified North Carolina capital company, a company must file an application with the Department and pay the initial certification fee. The application shall include any information and supporting documents required by the Secretary of State to determine whether the company qualifies for initial certification. Within 60 days after an application is filed, the Department shall determine whether the applicant qualifies for initial certification and shall either issue the certification or shall refuse the certification and notify the applicant in detail of the grounds for the refusal, including suggestions for the removal of those grounds.

The Department shall review and approve or reject applications in the order submitted. If more than one application is received by the Department on the same day, all applications received on that day shall be reviewed and approved simultaneously, except in the case of incomplete applications or applications for which additional information is requested by the Department and is not supplied by the applicant within 15 days after the request by the Department. If more than one applicant is certified on the same day, the Department shall ensure that all applicants certified on that day are notified of certification at the same time.

(b) Continuing Certification. -- A certified North Carolina capital company that has not qualified for permanent certification must, in order to remain certified, submit an annual application for continued certification and pay the annual review fee by July 1 of each year. The request shall include any information and supporting documents required by the Secretary of State to determine whether the company qualifies for continued certification. The request shall also include copies of the certified North Carolina capital company's applications for allocation of credit under G.S. 105-228.10E and of the Secretary's written allocation of credit to the company under G.S. 105-228.10E.

The Department shall conduct an annual review of each certified North Carolina capital company that has not qualified for permanent certification to determine if the company is in compliance with the requirements for initial and continuing certification and to ensure that the company's investments are in compliance with this Part. The review shall be based upon the company's financial statements and other information submitted in accordance with this section.

(c) Application Forms; Fees. -- Applications for initial and continuing certification under this section shall be in the form required by the Secretary of State. The Secretary of State shall prepare blank forms for the applications. Each application shall be signed by the owners, a manager, or an executive officer of the company. There shall be annexed to the application the affirmation of the person making the application in the following form: 'Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete.' A person who submits a false application is guilty of a Class 1 misdemeanor.

The Secretary of State shall charge an applicant a fee of five thousand dollars ($5,000) for initial certification as a certified North Carolina capital company, a fee of five thousand

dollars ($5,000) for annual review for continuing certification as a certified North Carolina capital company, and a fee of five thousand dollars ($5,000) for issuing a certificate of permanent certification. The Secretary of State shall credit forty percent (40%) of each fee to the Department of Revenue and shall retain the balance. Fees collected under this section shall be applied to the cost of administering this Part and Article 8C of Chapter 105 of the General Statutes.

(d) Periodic Reports Before Permanent Certification. -- Each certified North Carolina capital company shall provide the Department the following reports and updates on the due dates specified by the Department. The reports and updates shall be in the form prescribed by the Secretary of State and shall include any information required by the Secretary of State about the company and about the approved business ventures in which it has invested.

(1) Annual Audit. -- An annual audited financial statement and report that includes an opinion of an independent certified public accountant approved by the Secretary of State. The audit shall address the methods of operation and conduct of the business of the company to determine whether the company has complied with this Part and whether the cash invested in the company has been invested as required by this Part. The audit shall also determine whether each business in which the company has invested is an approved business venture as defined in this Article.

(2) Annual Audit of Cumulative Distributions. -- An audited report of the company's cumulative, nonqualified distributions that includes an opinion of an independent certified public accountant approved by the Secretary of State. The audit shall detail the company's cumulative distributions, other than qualified distributions, to equity holders and debt holders, as compared to the amount of the company's original certified capital and any additional capital contributions to the company. The audit shall determine what annual internal rate of return these cumulative nonqualified distributions, when combined with all tax credits allocated to debt holders and equity holders pursuant to G.S. 105-228.10E, have resulted in, when computed on the amount of the company's

original certified capital and any additional capital contributions to the company. The audit shall then compute an amount equal to twenty-five percent (25%) of the amount of these cumulative nonqualified distributions in excess of the amount, combined with the allocated tax credits, required to produce an annual internal rate of return of fifteen percent (15%) and compare that amount with the total amount of investment return the company has paid to the State pursuant to G.S. 35A-75.

(3) Midyear Update. -- A midyear, unaudited update of the certified North Carolina capital company's annual financial statement and report described in subdivision (1) of this subsection.

(e) Periodic Reports After Permanent certification. -- A certified North Carolina capital company that has qualified for permanent certification is no longer required to submit midyear updates but shall continue to submit, for informational purposes only, the annual financial statement and report described in subdivision (d)(1) of this section on the due dates specified by the Department for three years after the company qualifies for permanent certification. In addition, the company shall continue to submit the annual cumulative distributions audit described in subdivision (d)(2) of this section until it has made final distributions to its investors and will not be making any future distributions other than qualified distributions. Thereafter, no additional financial statements and reports are required under this subsection.

"§ 53A-72. Distributions; maximum interest rate.

(a) Distributions. -- A certified North Carolina capital company may make qualified distributions at any time. A certified North Carolina capital company may, without restriction, make distributions and payments to debt holders with respect to debt owed them by the company, but no distributions or payments may be made to an equity holder, or any of its affiliates, that is entitled to a credit under Article 8C of Chapter 105 of the General Statutes until the certified North Carolina capital company has qualified for permanent certification. A certified North Carolina capital company may make other distributions only after it has qualified for permanent certification.

(b) Maximum Interest Rate. -- A certified North Carolina capital company shall not charge interest on a senior, secured

loan at an annual rate that exceeds the prime rate plus three percent (3%).

"§ 53A-73. Tax credits.

A person who invests cash in a certified North Carolina capital company is entitled to a tax credit as provided in Article 8C of Chapter 105 of the General Statutes but, notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General Statutes, is not allowed a tax credit under that Division for the investment. In addition, notwithstanding the provisions of Division V of Article 4 of Chapter 105 of the General Statutes, a certified North Carolina capital company is not allowed a tax credit under that Division for its investments.

"§ 53A-74. Decertification of certified North Carolina capital company.

(a) Grounds for Decertification. -- Any material violation of this Part not cured pursuant to subsection (b) of this section shall be grounds for decertification under this section of a certified North Carolina capital company that has not qualified for permanent certification.

(b) Procedure for Decertification. -- If the Department determines that a certified North Carolina capital company is not in compliance with any requirement for continuing certification, it shall, by written notice, inform the officers of the company and the board of directors, manager, trustees, or general partners that the company will be decertified in 120 days after the date the notice is mailed unless the company corrects the deficiencies to bring itself in compliance with the requirements for certification. If the deficiencies are corrected so as to bring the certified North Carolina capital company into compliance within the 120-day grace period, then the violation of this Part shall be considered not to have occurred. At the end of the 120-day grace period, if the certified North Carolina capital company is still not in compliance, the Department shall decertify the company and send a notice of decertification to the company and to the Department of Revenue and the Department of Insurance.

(c) Effect of Decertification. -- If a certified North Carolina capital company is decertified, no further tax credits or carryforwards of credits for an investment in the company are allowed as provided in G.S. 105-228.10D. In addition, if a certified North Carolina capital company is decertified before it has met all the requirements of G.S. 53A-70(b)(1) through (3), all tax credits for investment in the company are forfeited as provided in G.S. 105-228.10D.

"§ 53A-75. Investment return to State.

(a) The tax credits provided in Article 8C of Chapter 105 of the General Statutes are an investment by the State of North Carolina in each certified North Carolina capital company. Each certified North Carolina capital company, as part of its initial certification, has agreed to pay the State a return on its investment. Each year, every certified North Carolina capital company shall determine from its annual audit of cumulative distributions filed pursuant to G.S. 53A-71(d)(2), an amount equal to twenty-five percent (25%) of its cumulative nonqualified distributions that exceed the amount of distributions, combined with all tax credits allocated to debt holders and equity holders, required to produce an annual internal rate of return of fifteen percent (15%). Within 30 days after filing its annual audit of cumulative distributions, the company shall pay the Department of Revenue the excess of this amount over the total cumulative amount it has paid under this section in past years. If a company's annual audit demonstrates that the annual internal rate of return of the company's cumulative nonqualified distributions, combined with all tax credits allocated to debt holders and equity holders, does not exceed fifteen percent (15%), the company is not required to make a payment under this section for that year.

(b) A company that fails to make a payment required by this section is subject to the penalties and remedies provided in Article 9 of Chapter 105 of the General Statutes to the same extent as if the required payment were a tax. The Department of Revenue shall credit payments made under this section to the General Fund as nontax revenue.

"§ 53A-76. Rules; report.

The Secretary of State may adopt rules to implement this Part. The Secretary of State shall report to the Legislative Research Commission by October 1 of each year the number of certified North Carolina capital companies certified under this Part, the date each company was created, the amount and percentage of certified capital invested by each company, the amount of tax credits allocated to each company, and any other information requested by the Legislative Research Commission."

Section 4. G.S. 53A-37 reads as rewritten:

"§ 53A-37. Definitions.

The following definitions apply in this Article:

(1) Affiliate of a company. -- Any of the following:

a. A person who directly or indirectly beneficially owns (whether through rights,

options, convertible interests, or otherwise), controls, or holds power to vote ten percent (10%) or more of the outstanding voting securities or other ownership interests of the company.

b. A person ten percent (10%) or more of whose outstanding voting securities or other ownership interests are, directly or indirectly, beneficially owned (whether through rights, options, convertible interests, or otherwise), controlled, or held with power to vote by the company.

c. A person who directly or indirectly controls, is controlled by, or is under common control with the company on account of common ownership, common directors, or common management.

d. A partnership in which the company is a general partner.

e. A person who is an officer, a director, or a management employee of the company, or is a close family member of an officer, a director, or a management employee of the company. For the purpose of this requirement, a close family member is a spouse, parent, child, sibling, parent-in-law, sibling-in-law, son-in-law, or daughter-in-law.

(2) Approved business venture. -- A business that satisfies all of the following conditions as of the time of a certified North Carolina capital company's first investment in the business:

a. It has its principal business office in this State, it does a majority of its production in this State, and it employs a majority of its employees in this State.

b. It has no more than 300 employees and, during its most recent fiscal year, it had gross revenues of no more than seven million dollars ($7,000,000) on a consolidated basis as determined in accordance with generally accepted accounting principles.

c. It is not a majority-owned subsidiary of another corporation.

d. It satisfies the conditions established in G.S. 105-163.013(b)(3) through (6).

e. Its authorized representative has given the certified North Carolina company investing in it a sworn affidavit certifying that a majority of the proceeds of the investment will be used for operations or capital improvements in North Carolina.

(3) Approved investment. -- The investment of cash by a certified North Carolina capital company in such a manner as to acquire capital in a business that, at the time of the first investment in the business by a certified North Carolina capital company, was an approved business venture. The capital acquired may be any debt, equity, or hybrid security, whether secured or unsecured, of any nature, including a debt instrument or security that has the characteristics of debt but provides for conversion into equity or equity participation instruments such as options or warrants.

(4) Business. -- A corporation, a partnership, an association, a limited liability company, or a sole proprietorship operated for profit.

(5) Certified capital. -- The cash invested in a certified North Carolina capital company, either in the form of equity or debt capital, during the 365-day period after the company has been initially certified as provided in Part 3 of this Article. If the certified capital is in the form of debt capital, the debt instrument issued by the certified North Carolina capital company, at par value or a premium, must have an original maturity date of at least five years after the date of issuance and a repayment schedule that is no faster than a level principal amortization.

(6) Certified North Carolina capital company. -- A partnership, corporation, trust, or limited liability company whose primary business activity is the investment of cash in approved business ventures and that is certified by the Secretary of State as provided in Part 3 of this Article.

(7) Department. -- The Department of the Secretary of State.

~~(2)~~ (8) Equity security. -- Common stock, preferred stock, an interest in a partnership, subordinated debt, or a warrant that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.

(9) Insurance company. -- Defined in G.S. 58-1-5.

~~(3)~~ (10) Mezzanine finance. -- An investment in the equity securities or subordinated debt of a Qualified North Carolina Business.

(11) Person. -- An individual, a corporation, a partnership, an association, a trust, a limited liability company, or another legal entity.

(12) Qualified distribution. -- A distribution or payment to equity owners of a certified North Carolina capital company or to their shareholders, officers, directors, partners, members, managers, employees, or affiliates, in connection with any of the following:

a. Reasonable costs and expenses of forming, syndicating, managing, and operating the company, including management fees.

b. An increase in State or federal taxes, penalties, or interest of the company's equity owners to the extent the increase relates to the ownership, management, or operation of the company.

~~(4)~~ (13) Qualified North Carolina Business. -- A business whose headquarters and principal business operations are located in North Carolina and which, together with its affiliates on a consolidated basis, had gross income during the immediately preceding fiscal year, determined in accordance with generally accepted accounting principles without taking into account extraordinary items, of less than forty million dollars ($40,000,000).

~~(5)~~ (14) Rural areas. -- Any county in North Carolina which does not include within its boundaries a city, as defined by G.S. 160A-1(2), with a population greater than one percent (1%) of the population of North Carolina.

~~(6)~~ (15) Security. -- A security as defined in G.S. 78A-2(11).

~~(7)~~ (16) Subordinated debt. -- Indebtedness that is or will be subordinated to other indebtedness of the

issuer. Subordinated debt may be convertible into common stock, preferred stock, or an interest in a partnership.

~~(8)~~ (17) Traditional ~~Financial Institutions.~~ financial institutions. -- Corporations or associations chartered under ~~Chapters~~ Chapter 53 or 54B of the General Statutes."

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"ARTICLE 8C.

"Premiums Tax Credit for Investments in North Carolina Small Businesses.

"§ 105-228.10A. Purpose.

The purpose of this Article is to stimulate a substantial increase in venture capital investments in North Carolina by providing an incentive for insurance companies to invest in certified North Carolina capital companies.

"§ 105-228.10B. Definitions.

The following definitions apply in this Article:

(1) Certified capital. -- Defined in G.S. 53A-37.

(2) Certified North Carolina capital company. -- A certified North Carolina capital company created under Article 3 of Chapter 53A of the General Statutes.

"§ 105-228.10C. Premiums tax credit for investments.

(a) Credit. -- A person who invests certified capital in one or more certified North Carolina capital companies is allowed against the gross premiums tax imposed by G.S. 105-228.5 and G.S. 105-228.8 a credit equal to the amount of certified capital invested by the taxpayer during the taxable year, subject to the limitations provided in this Article. To claim the credit allowed by this section, the taxpayer must provide the Secretary a copy of each certified North Carolina capital company's application for allocations of credit under G.S. 105-228.10E, a copy of the Secretary's written allocation of credit under G.S. 105-228.10E, and any other supporting documentation the Secretary requires.

(b) Limitations. -- The taxpayer may not take the entire credit for the taxable year the investment is made, but may take up to ten percent (10%) of the aggregate credit allowed under this section for that taxable year and for each succeeding taxable year until the entire credit has been used. The amount of credit taken may not exceed the taxpayer's gross premiums tax liability for a taxable year reduced by the sum of all credits

allowable except payments of tax by or on behalf of the taxpayer. Subject to the ten percent (10%) limitation, to the extent a taxpayer does not use all of the credit it is entitled to take in any year, the unused portion of that year's credit may be carried forward to the five succeeding taxable years.

"§ 105-228.10D. Effect of decertification.

If a certified North Carolina capital company is decertified under G.S. 53A-74, no tax credit or carryforward of a tax credit for an investment in the company is allowed under this Article for a taxpayer's taxable year beginning in the calendar year the decertification occurred or for subsequent taxable years. Decertification of a certified North Carolina capital company after it has met all the requirements of G.S. 53A-70(b)(1) through (3) does not affect a tax credit allowed under this Article for a taxpayer's taxable year that began before the calendar year in which the decertification occurred. If a certified North Carolina capital company is decertified before it has met all the requirements of G.S. 53A-70(b)(1) through (3), all tax credits previously allowed to taxpayers for investment in the company are forfeited. A taxpayer who forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the company is decertified; a taxpayer who fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

"§ 105-228.10E. Cap; annual ceiling.

(a) Cap. -- The amount of credit allowed a taxpayer under this Article for a taxable year may not exceed ten percent (10%) of the annual ceiling for that year.

(b) Annual Ceiling. -- The total amount of tax credits that may be taken by all taxpayers under this Article in a taxable year may not exceed fifteen million dollars ($15,000,000). The Department of Revenue shall allocate this amount among taxpayers as provided in this subsection. A certified North Carolina capital company may apply for allocation of credits on behalf of its investors no earlier than the first business day after it is certified. The application shall be in the form required by the Secretary and shall provide all of the following:

(1) The name of each investor.

(2) The amount each investor has committed to invest in the company.

(3) Proof that the investor has committed to invest the funds subject to allocation of the applicable credits pursuant to this section.

(4) The maximum amount of credit the investment would entitle the investor to under this Article for the current taxable year and the following nine taxable years.

(5) Any other information required by the Secretary.

Upon receipt of a completed application, the Department shall determine the amount of available credit not yet allocated for each taxable year specified in the application. Within 20 business days after receipt of the application, the Department shall allocate to the North Carolina capital company, on behalf of the investors named in the application, the total amount of credit applied for in the application, but only to the extent of available credit not yet allocated for each taxable year. The Department's allocations of credit under this subsection shall be in writing.

The Department shall allocate available credit to applicants in the order the applications are received. If more than one certified North Carolina capital company submits a completed application on the same day, the Department shall make the allocations to those applicants simultaneously. If the amount of credit applied for in the simultaneous applications exceeds the amount of available credit not yet allocated for a taxable year, the Department shall allocate the available credit for that taxable year among the simultaneous applicants on a pro rata basis in proportion to the amount of credit applied for by each."

Section 6. G.S. 105-228.8(e) reads as rewritten:

"(e) This section shall not apply to special purpose obligations or assessments based on premiums imposed in connection with particular kinds of insurance, to the special purpose regulatory charge imposed under G.S. 58-6-25, or to dedicated special purpose taxes based on premiums. For purposes of this section, seventy-five percent (75%) of the one and thirty-three hundredths percent (1.33%) tax on amounts collected on contracts of insurance applicable to fire and lightning coverage shall not be a special purpose obligation or assessment or a dedicated special purpose tax within the meaning of this subsection. The credit allowed by G.S. 105-228.10C shall not be considered in determining the amount of premium taxes imposed by this State."

Section 7. G.S. 58-6-25(a) reads as rewritten:

"(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. As used in this section, the term 'insurance company' means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except that the term does not include a hospital, medical, or dental service corporation regulated under Articles 65 and 66 of this Chapter. The term 'insurance company' does not include a company regulated under Article 67 of this Chapter. The charge levied in this section is in addition to all other fees and taxes. The charge shall be at a percentage rate of the company's premium tax liability for the taxable year. In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) The additional taxes imposed by G.S. ~~105-228.8 and the~~ 105-228.8.

(2) The additional local fire and lightning tax imposed by G.S. ~~105-228.5(d)(4) shall be disregarded.~~ 105-228.5(d)(4).

(3) The credit allowed by G.S. 105-228.10C."

Section 8. The title of Chapter 53A of the General Statutes reads as rewritten:

"Chapter 53A.

"Business Development ~~Corporations and North Carolina Capital Resource Corporations.~~ and Access to Capital."

Section 9. The title of Article 3 of Chapter 53A of the General Statutes reads as rewritten:

"ARTICLE 3.

"North Carolina Enterprise ~~Corporations.~~ Corporations and Certified North Carolina Capital Companies."

Section 10. G.S. 53A-35 and G.S. 53A-47 are repealed.

Section 11. G.S. 53A-36 reads as rewritten:

"**§ 53A-36. Legislative findings and purpose.**

(a) The General Assembly finds ~~and declares~~ that there exists in ~~the State of~~ North Carolina a serious shortage of mezzanine finance capital and credit available for investment in rural ~~areas~~ areas and other areas in the State. This shortage of mezzanine finance capital and credit is severe throughout ~~the rural areas of~~ the State, has persisted for a number of years, and constitutes a grave threat to the welfare and prosperity of all residents of the State. The lack of access to capital prevents North Carolina businesses from creating jobs that would otherwise enhance the economy of the State and provide livelihoods for North Carolina citizens.

(b) The General Assembly finds ~~and declares further~~ that private enterprise and existing federal and State governmental programs have not adequately alleviated the severe shortage of mezzanine finance capital and credit available for investments in ~~rural areas in the~~ this State.

(c) The General Assembly finds ~~and declares~~ that it is a matter of grave public necessity that North Carolina Enterprise Corporations be authorized to be created and ~~to be~~ empowered to alleviate these severe shortages of mezzanine finance capital and credit for investment in rural areas of the State. North Carolina Enterprise Corporations shall help eliminate barriers to rural economic development by providing mezzanine finance capital and credit, and other types of financing as appropriate, to businesses in rural areas that have been unable to obtain sufficient financing through traditional financial institutions.

(d) The General Assembly finds that it is a matter of grave public necessity that certified North Carolina capital companies be authorized to be created as venture capital companies whose primary business activity is the investment of cash in small North Carolina business ventures that are in need of capital for survival, expansion, new product development, or similar purposes."

Section 12. G.S. 53A-38(a) reads as rewritten:

"(a) One or more persons, a majority of whom are residents of this State, may, by filing a certificate of incorporation as provided in subsection (b), incorporate a North Carolina Enterprise Corporation under the provisions of this ~~Article.~~ Part."

Section 13. G.S. 53A-41 reads as rewritten:

"**§ 53A-41. Governing law.**

Except as otherwise provided in this ~~Article,~~ Part, a North Carolina Enterprise Corporation shall be governed by Chapter 55 of the General Statutes."

Section 14. G.S. 53A-42 reads as rewritten:

"**§ 53A-42. Powers.**

A North Carolina Enterprise Corporation created under this ~~Article~~ Part shall have all the powers conferred on business corporations by Chapter 55 of the General Statutes."

Section 15. Sections 5, 6, and 7 of this act and G.S. 53A-73, as enacted by Section 3 of this act, become effective for taxable years beginning on or after January 1, 1999, and apply to investments made on or after that date. The remainder of this act is effective when this act becomes law. An application for initial certification as a North Carolina capital company

pursuant to G.S. 53A-71 may not be submitted until the first Monday that falls at least 45 days after this act becomes law. G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as enacted by this act, are repealed effective for investments made on or after January 1, 2001. If any provision of this act or its application is held invalid, then G.S. 53A-73 and Article 8C of Chapter 105 of the General Statutes, as enacted by this act, are repealed effective for investments made on or after the date of the holding of invalidity.

EXPLANATION OF SENATE BILL 956 (PCS):
Venture Capital Investment Incentive

TO: Senate Finance Committee
FROM: Committee Staff
DATE: August 5, 1997
SPONSOR: Senator Hoyle

Senate Bill 956 seeks to provide start-up and expansion capital to small businesses by giving private insurance companies that make certain venture capital investments a dollar for dollar tax credit to be applied against the insurance premiums tax owed by these companies. The tax credit is effective for taxable years beginning on or after January 1, 1999, and applies to investments made on or after that date, and it expires for investments made on or after January 1, 2001.

Under the bill, an insurance company invests in a certified North Carolina capital company (CAPCO), which in turn provides capital to approved North Carolina business ventures. The insurance company is entitled to a tax credit of 100% of the cash it invests in a CAPCO during the 365-day period after the company has been initially certified. The credit may be taken at the rate of up to 10% per year until the entire credit is used, subject to an annual maximum credit amount of $1,500,000. Any unused installment of the credit may be carried forward for five years, subject to the 10% limit. If a CAPCO is decertified, the insurance company is not permitted to take any unused tax credits or carryforwards. If the CAPCO is decertified before it has met the requirement that it invest 50% of its certified capital within four years in approved investments, the taxpayer also forfeits all tax credits and carryforwards previously taken and must repay all back taxes avoided because of the credit, with interest.

The total amount of credit that may be taken by all taxpayers in any one taxable year is $15,000,000. The credit is allocated to taxpayers on a "first come, first served" basis. The CAPCO must apply to the Department of Revenue for the allocation of credits on behalf of its investors. Upon receipt of the application, the Department will determine the amount of available credit not yet allocated for each taxable year specified in the application. The Department must allocate to the CAPCO, on behalf of its investors, the total amount of credit applied for in the application to the extent of the available credit not yet allocated for each taxable year. To claim the credit, the taxpayer must provide the Secretary of Revenue with a copy of the CAPCO's application for allocation of credit, a copy of the Secretary of Revenue's written allocation of credit, and any other supporting documentation the Secretary may require. The original bill required the Secretary of State to make the allocation; the proposed committee substitute shifts that responsibility to the Department of Revenue. The Department of Revenue has stated that it will have recurring costs of $22,325 and nonrecurring costs of $3,200 in taking on this responsibility.

The allocation of the credit appears to violate the uniformity provisions of the North Carolina Constitution. The General Assembly has the authority to create classifications for

taxation, but the class must be reasonable and based on a rational difference of situation and condition. In other words, there must be a rational basis reasonably related to the purpose of the legislation to justify the decision to exclude some parties from the application of the law. Under the allocation method proposed by this bill, a taxpayer who made an investment and applied for allocation of the credit early in the taxable year would be allowed a tax credit and an identical taxpayer who applied for allocation later in the year would not. If this "first come, first served" allocation were held unconstitutional, the bill has a nonseverability clause stating that the tax credit is repealed for investments made on or after that date. For the tax years challenged, however, the State would probably be liable for refunds for those who paid under protest. Other tax credits in existing law provide a cap by allocating the credits on a pro rata basis after all identical applicants have applied for credit, which does not violate the constitution.

An insurance company must invest cash, either in the form of equity or debt capital, in a certified North Carolina capital company to be eligible for the credit allowed by this bill. Traditional private sector venture capital financing involves risks greater than those inherent in other investments. Under this bill, the State assumes this increased risk on behalf of the insurance company by providing tax credits equal to the amount of the investment, thus essentially reimbursing the company for its investment. The proposed committee substitute provides the State a potential return on its investment. Under proposed G.S. 53A-75, a CAPCO would pay the State 25% of the excess of its cumulative distributions that exceed the amount that, when combined with all tax credits allocated, would produce an annual internal rate of return of 15%. The calculation would be made as part of the CAPCO's annual audit and payment to the Department of Revenue would be due within 30 days after the audit. The payments would be credited to the General Fund as nontax revenue.

To be initially certified by the Secretary of State, a capital company must have at least $500,000 of liquid assets which it would invest in approved business ventures. An approved business venture is a business that meets all of the following conditions:

1. It is headquartered in this State, does a majority of its production in this State, and employs a majority of its employees in this State.
2. It employs no more than 300 employees.
3. It has gross revenues of no more than $7,000,000 a year.
4. It is not a majority-owned subsidiary of another company.
5. It is engaged primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service related industry.
6. It does not engage in providing professional services, construction or contracting, selling or leasing at retail, purchase or sale of commercial paper or real estate, personal grooming or cosmetic services, entertainment, athletic or recreation services for a fee.
7. It is not formed for the purpose of acquiring the stock or assets of another business.
8. It is not a real estate related business.

9. Its authorized representative has provided a sworn affidavit that a majority of the proceeds of the CAPCO's investment in it will be used for operations or capital improvements in North Carolina.

For a CAPCO's certification to be renewed, it must invest 25% of the capital invested in it in approved business ventures within two years, 40% within three years, and 50% within five years. The company is also limited to investing no more than 15% of its capital in any one business. Once a CAPCO has invested 100% of the capital invested in it in approved business ventures, it qualifies for permanent certification. It may then distribute investment returns to investors and is no longer required to obtain continuing certification. The company must continue to file annual financial statements and reports for three years after it qualifies for permanent certification. The initial certification, annual review, and permanent certification are handled by the Secretary of State's office for a fee of $5,000 each, which will be distributed 40% to the Department of Revenue and 60% to the Secretary of State. The Secretary of State is to report to the Legislative Research Commission annually on the amount of the credit taken and the number of taxpayers taking the credit.

The credit allowed by this bill for insurance companies is similar to the income tax credit currently allowed to individuals and small partnerships for investing directly in qualified businesses. Prior to January 1, 1997, the definition of a qualified business was very similar to an approved business venture. The General Assembly expanded the credit to include businesses outside of North Carolina because the credit violated the Commerce Clause of the Constitution when it was limited to investments in North Carolina businesses. Although the credit allowed by this bill is limited to indirect investments in North Carolina businesses and thus discriminates against out-of-state businesses, the Attorney General's office believes that the credit would not be held unconstitutional if challenged because this credit applies only to insurance companies. Congress, through the McCarran-Ferguson Act, has removed all Commerce Clause limitations on the authority of the states to regulate and tax the business of insurance. Committee staff has found no case law on point with the tax credit proposed by this bill. Most of the cases surrounding the McCarran-Ferguson Act concern the differing tax treatment between in-state and out-of-state insurance companies. The Supreme Court has consistently held that a state may discriminate in its tax treatment of insurance companies because of the McCarran-Ferguson Act. The courts have not addressed whether this discrimination may be extended beyond insurance companies to the business ventures in which they invest without a violation of the Commerce Clause. If the bill were invalidated under the Commerce Clause, the bill has a nonseverability clause stating that the tax credit is repealed for investments made on or after that date. For the tax years challenged, however, the State would probably be liable for refunds for those who paid under protest.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1027
Committee Substitute Favorable 5/15/97
Third Edition Engrossed 6/30/97

Short Title: State Treasurer Venture Capital. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO STIMULATE SUBSTANTIAL GROWTH OF VENTURE CAPITAL INVESTMENTS IN NORTH CAROLINA THROUGH INVESTMENTS BY THE STATE TREASURER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-69.1(c) is amended by adding a new subdivision to read:

"(7) Any of the investments authorized by G.S. 147-69.2(b)(2) through (6) and (b)(9) and (10)."

Section 2. G.S. 147-69.2(b) reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the ~~following:~~ following in the State Treasurer's discretion:

(1) Any of the investments authorized by G.S. ~~147-69.1(c);~~ 147-69.1(c), except that assets of retirement and pension systems may not be invested in the investments authorized by subdivision (9) or (10) of this subsection pursuant to G.S. 147-69.1(c)(7).

(2) General obligations of other states of the United ~~States;~~ States.

(3) General obligations of cities, counties and special districts in North ~~Carolina;~~ Carolina.

(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or ~~without~~ outside of the United States if ~~such~~ the obligations bear one of the three highest ratings of at least one nationally recognized rating service and do not bear a rating below the three highest by any nationally recognized rating service which rates the particular ~~security;~~ security.

(5) Notes secured by mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration on real estate located within the State of North ~~Carolina;~~ Carolina.

(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the three highest by any nationally recognized rating service ~~which~~ that rates the particular ~~securities;~~ securities.

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts ~~which~~ that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, ~~common~~ common, or collective trust funds of banks and trust companies and (iv) real estate investment trusts; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located in the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the book value of all invested assets of the Retirement ~~Systems;~~ Systems.

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, and the Legislative Retirement System (hereinafter referred to collectively as the Retirement Systems), preferred or common stocks issued by any company incorporated or otherwise created or located within or ~~without~~ outside of the United States, ~~provided:~~ if all of the following conditions are met:

a. ~~That~~ The common stock or preferred stock of ~~such~~ the corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) ~~system;~~ system.

b. ~~That such~~ The corporation ~~shall have~~ has paid a cash dividend on its common stock in each year of the 5-year

period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of ~~such~~ the corporation for the whole of ~~such~~ that period ~~shall~~ have been at least equal to the amount of ~~such~~ the dividends ~~paid;~~ paid.

c. ~~That in~~ In applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, ~~where such corporation shall have~~ if the corporation acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or ~~shall have~~ acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this ~~section~~ subdivision have been complied ~~with;~~ with.

d. ~~That the~~ The book value of common and preferred stocks including securities convertible into common stocks shall not exceed fifty ~~per centum~~ percent (50%) of the book value of all invested assets of the Retirement ~~Systems; provided, further:~~ Systems and the following conditions must also be met:

1. Not more than one and one-half ~~per centum~~ percent (1 1/2%) of the book value of ~~such~~ the assets shall be invested in the stock of a single ~~corporation, and provided further;~~ corporation.
2. The total number of shares in a single corporation shall not exceed eight ~~per centum~~ percent (8%) of the issued and outstanding stock of ~~such corporation, and provided further;~~ the corporation.
3. ~~As used in this subdivision d. and elsewhere in this section, book value shall mean adjusted cost basis as shown on the records of the State Treasurer.~~

e. Up to five ~~per cent~~ percent (5%) of the limits authorized in subdivision d. may be invested in the stocks or shares of a diversified investment company registered under the 'Investment Company Act of 1940' ~~which~~ that has total assets of at least fifty million dollars ($50,000,000).

f. ~~Individual, common~~

As used in this subsection, the term 'book value' means adjusted cost basis as shown on the records of the State Treasurer.

Notwithstanding the provisions of sub-subdivisions a. through e., the investments authorized in this subdivision (8) may be made in individual, common, or collective trust funds of banks or trust companies ~~provided that~~ if the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

~~g. That investments~~

Notwithstanding the provisions of sub-subdivisions a. through e., the investments authorized in this subdivision (8) may be made in securities convertible into common stocks issued by ~~any such~~ such a company, if ~~such~~ the securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) ~~Obligations~~ With respect to assets other than assets of retirement or pension systems, obligations, and securities of the North Carolina Enterprise Corporation, or of a limited partnership in which the North Carolina Enterprise Corporation is the only general partner, not to exceed twenty million dollars ($20,000,000) from all funds.

(10) ~~A~~ With respect to assets other than assets of retirement or pension systems, a limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout ~~transactions, not to exceed thirty million dollars ($30,000,000)~~ transactions within or outside of the United States, not to exceed one hundred thirty million dollars ($130,000,000) from all funds. This maximum dollar amount does not apply to or restrict the reinvestment in accordance with this subdivision of any income from these investments.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than September 1, 1999. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from any such loss by appropriating to such Escheat Fund funds equivalent to such loss."

Section 3. As soon as practicable, the State Treasurer shall assure that all assets of retirement and pension systems described in G.S. 147-69.2(a) are no longer invested in investments authorized by G.S. 147-69.2(b)(9) or (10).

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1027
Committee Substitute Favorable 5/15/97
Third Edition Engrossed 6/30/97
Proposed Senate Committee Substitute H1027-CSLC-8/7
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: State Treasurer Venture Capital. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO STIMULATE SUBSTANTIAL GROWTH OF VENTURE CAPITAL INVESTMENTS IN NORTH CAROLINA THROUGH INVESTMENTS BY THE STATE TREASURER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-69.1(c) is amended by adding a new subdivision to read:

"(7) Any of the investments authorized by G.S. 147-69.2(b)(2) through (6) and (b)(13)."

Section 2. G.S. 147-69.2(b) reads as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the ~~following:~~ following in the State Treasurer's discretion:

(1) Any of the investments authorized by G.S. ~~147-69.1(c);~~ 147-69.1(c), except that assets of retirement and pension systems may not be invested in the investments authorized by subdivision (13) of this subsection pursuant to G.S. 147-69.1(c)(7).

(2) General obligations of other states of the United ~~States;~~ States.
(3) General obligations of cities, counties and special districts in North ~~Carolina;~~ Carolina.
(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or ~~without~~ outside of the United States if ~~such~~ the obligations bear one of the three highest ratings of at least one nationally recognized rating service and do not bear a rating below the three highest by any nationally recognized rating service which rates the particular ~~security;~~ security.
(5) Notes secured by mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration on real estate located within the State of North ~~Carolina;~~ Carolina.
(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the three highest by any nationally recognized rating service ~~which~~ that rates the particular ~~securities;~~ securities.
(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts ~~which~~ that provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, ~~common~~ common, or collective trust funds of banks and trust companies and (iv) real estate investment trusts; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located in the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the book value of all invested assets of the Retirement ~~Systems;~~ Systems.
(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local

Governmental Employees' Retirement System, and the Legislative Retirement System (hereinafter referred to collectively as the Retirement Systems), preferred or common stocks issued by any company incorporated or otherwise created or located within or ~~without~~ outside of the United States, ~~provided:~~ if all of the following conditions are met:

a. ~~That~~ The common stock or preferred stock of ~~such~~ the corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) ~~system;~~ system.

b. ~~That such~~ The corporation ~~shall have~~ has paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of ~~such~~ the corporation for the whole of ~~such~~ that period ~~shall~~ have been at least equal to the amount of ~~such~~ the dividends ~~paid;~~ paid.

c. ~~That in~~ In applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, ~~where such corporation shall have~~ if the corporation acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or ~~shall have~~ acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this ~~section~~ subdivision have been complied ~~with;~~ with.

d. ~~That the~~ The book value of common and preferred stocks including securities

convertible into common stocks shall not exceed fifty ~~per centum~~ percent (50%) of the book value of all invested assets of the Retirement ~~Systems; provided, further:~~ Systems and the following conditions must also be met:

1. Not more than one and one-half ~~per centum~~ percent (1 1/2%) of the book value of ~~such~~ the assets shall be invested in the stock of a single ~~corporation, and provided further;~~ corporation.
2. The total number of shares in a single corporation shall not exceed eight ~~per centum~~ percent (8%) of the issued and outstanding stock of ~~such corporation, and provided further;~~ the corporation.
3. ~~As used in this subdivision d. and elsewhere in this section, book value shall mean adjusted cost basis as shown on the records of the State Treasurer.~~

e. Up to five ~~per cent~~ percent (5%) of the limits authorized in subdivision d. may be invested in the stocks or shares of a diversified investment company registered under the 'Investment Company Act of 1940' ~~which~~ that has total assets of at least fifty million dollars ($50,000,000).

~~f. Individual, common~~

As used in this subsection, the term 'book value' means adjusted cost basis as shown on the records of the State Treasurer.

Notwithstanding the provisions of sub-subdivisions a. through e., the investments authorized in this subdivision (8) may be made in individual, common, or collective trust funds of banks or trust companies ~~provided that~~ if the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

~~g. That investments~~

Notwithstanding the provisions of sub-subdivisions a. through e., the investments authorized in this subdivision (8) may be made in securities convertible into common stocks issued by ~~any such~~ such a company, if ~~such~~ the securities

bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) Obligations and securities of the North Carolina Enterprise Corporation, or of a limited partnership in which the North Carolina Enterprise Corporation is the only general partner, not to exceed twenty million dollars ($20,000,000) from all funds.

(10) A limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout ~~transactions,~~ transactions within or outside of the United States, not to exceed thirty million dollars ($30,000,000) from all funds. This maximum dollar amount does not apply to or restrict the reinvestment in accordance with this subdivision of any income from these investments.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than September 1, 1999. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from any such loss by appropriating to such Escheat Fund funds equivalent to such loss.

(12) With respect to assets of the Escheat Fund, a limited partnership interest in a partnership that is domiciled or has an office in North Carolina and whose primary purpose is to provide financing to businesses located in rural North Carolina, not to exceed one hundred million dollars ($100,000,000). This maximum dollar amount does not apply to or restrict the reinvestment in accordance with this subdivision of any income from these investments.

An investment made pursuant to this subdivision must be conditioned on the partnership's reinvestment of the invested funds only in businesses located in rural North Carolina. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from any such loss by appropriating to the Escheat Fund funds equivalent to the loss.

(13) With respect to assets other than assets of retirement or pension systems, a limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout transactions within or outside of the United States, not to exceed, when combined with the amount invested under subdivision (12) of this subsection, one hundred million dollars ($100,000,000) from all funds. This maximum dollar amount does not apply to or restrict the reinvestment in accordance with this subdivision of any income from these investments."

Section 3. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1027, PCS:
State Treasurer Venture Capital

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 7, 1997
SPONSOR: Representative Owens

The proposed committee substitute for House Bill 1027 makes the following changes in the law regarding the State Treasurer's duty to invest certain funds:

1. It authorizes the State Treasurer to invest up to $100 million of excess cash of the Escheat Fund in North Carolina partnerships that primarily finance rural North Carolina businesses. The partnerships would be required to reinvest the funds only in rural North Carolina businesses.
2. It authorizes the State Treasurer to invest excess cash of non-retirement trust funds in venture capital partnerships. The amount invested, when added to the amount of Escheat Funds invested as described in #1 above, may not exceed $100 million.
3. It authorizes the State Treasurer to invest excess cash of the General Fund and Highway Fund in a variety of new investments, including venture capital partnerships. The amount invested, when added to the amount invested as described in #1 and #2 above, may not exceed $100 million.

G.S. 147-69.2 sets out the permitted investments for cash in trust funds and special funds held by the State for any purpose other than meeting State appropriations. Under current law, the cash in these funds may be invested in a variety of obligations and securities, including up to $30 million in venture capital partnerships and up to $20 million in obligations or securities of the North Carolina Enterprise Corporation. House Bill 1027 adds two new permitted investments for cash in these funds. It authorizes the State Treasurer to invest up to $100 million of the Escheat Fund in North Carolina partnerships that primarily finance rural North Carolina businesses. The investment must be conditioned on the partnership's reinvestment of the funds only in rural North Carolina businesses. If this investment results in a loss, the bill states that it is the intent of the General Assembly to appropriate funds to the Escheat Fund to make up the loss. The bill also authorizes the State Treasurer to invest additional cash in these trust funds and special funds, other than retirement or pension systems, in venture capital partnerships. The additional amount invested may not exceed

$100 million when added to the amount of Escheat Funds invested in North Carolina partnerships financing North Carolina businesses.

G.S. 147-69.1 sets out the permitted investments for cash in the Highway Fund and the General Fund in excess of the amount required to meet current needs and demands. Under current law, the excess cash may be invested in highly liquid assets such as United States obligations, obligations of various federal agencies, obligations of the State, certificate of deposits, and savings accounts. House Bill 1027 amends G.S. 147-69.1(c) to allow the State Treasurer to invest excess cash of the General Fund and the Highway Fund in the following additional assets, some of which are less liquid:

- general obligations of other states
- general obligations of North Carolina cities, counties, and special districts
- highly-rated obligations of U.S. companies
- FHA-insured or VA-guaranteed mortgages on real estate in North Carolina
- limited partnership interests in venture capital partnerships.

The bill makes additional clarifying and technical changes to the statutes governing investments by the State Treasurer. It is effective when it becomes law.

The State Treasurer has a fiduciary duty to seek the best possible investments in terms of return and safety. Existing law reflects the policy of the State that the State Treasurer's investment decisions should be professional decisions made in the best interest of the owner of the assets and not influenced by political or economic development considerations. The Treasurer is independent of fiscal control by the Governor and is authorized to contract with independent professionals and experts as necessary for proper administration of the investment programs. The Treasurer is required to establish annual yield targets for investments and report annually to the General Assembly on the nature and character of all investments, the return on the investments, and the extent to which the annual yield targets have been reached. The Treasurer is also required to report quarterly on all investments to the Joint Legislative Commission on Governmental Operations and to the Co-Chairs of the House and Senate Appropriations Committees.

The State Treasurer has made investments since 1988 in venture capital partnerships and in the North Carolina Enterprise Corporation. The annualized

return on these investments through September 1996 is 4.55%.[1] The annualized return on the State's equity investment fund from September 1988 through September 1996 is 15.31%.

The North Carolina Enterprise Corporation is an entity formed under Article 3 of Chapter 53A of the General Statutes to make investments in small North Carolina businesses. The Corporation focuses on investments that have significant potential to create jobs and diversify and stabilize the economy of rural areas of the State.

The Escheat Fund is one of the trust funds invested by the State Treasurer. Escheated property is property to which the State assumes ownership under Chapter 116B of the General Statutes, either because the property is determined to be abandoned or the property was owned by a person who died and had no heirs. Article IX, 10 of the North Carolina Constitution requires property in the Escheat Fund to be used to "aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State." The State Treasurer administers the Escheat Fund and resolves the claims of any creditors of those who owned property that has escheated.

In 1987, the State Treasurer was authorized to invest up to 3% of the cash in the General Fund and the Highway Fund in venture capital partnerships. In 1988, this authorization was extended to include up to $20 million in the North Carolina Enterprise Corporation. During the 1990-91 financial crisis, the cash in the General Fund became low. At that time, the State Auditor informed the General Assembly that investment of the General Fund in these illiquid assets creates a potential problem because when the cash balance is below the amount invested in the illiquid assets, it creates a deficit cash balance. Based on the Auditor's recommendation, legislation was passed in 1990 to prohibit investment of the General Fund and Highway Fund in venture capital partnerships and in the North Carolina Enterprise Corporation and authorizing instead the investment of the less liquid trust funds in these assets. As a result, the pension and retirement funds bought the venture capital and Enterprise Corporation investments from the General Fund. This bill retains the existing authorization for investment of up to $50 million of pension and retirement funds in venture capital partnerships and the North Carolina Enterprise Corporation, but authorizes the new $100 million to be invested from only non-pension and retirement sources, including the Highway Fund and the General Fund.

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[1] There are ten such investments, with annualized returns ranging from 16.70% to (20.62%), over different periods.

Attachment # 2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

Thursday, August 7, 1997

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Duncan	WCSR
Sue Poole	Sanford Holshouser
Theresa Kostrzewa	"
Jack Cameron	AFLCCQ
Roger Bone	Bone + Assoc.
Lou Wilson	NCAHTCT
Willie Riddick	DOR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — Thursday, August 7, 1997

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
C Sexton	NC AFL-CIO
Pat Gleb	Bobbitt + Taylor
John May	NC CWA Council
Angie Harris	Commerce
Rich Carlisle	"
Wayne Hunter	DMV
Mary Merrimon	Poyner & Spruill
Bob Worsley	Poyner & Spruill
John Lowe	TDA
Darrell Arnold	SEANC
Doug Hoyle	Dept. of State Treasurer

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

Thursday, August 7, 1997

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charles Talbert	Office of Treasurer
Joyce Peters	JP Assoc.
Katherine Davis	ElectriCities
George Howe	MCWC
Daryl Simmons	EDA, PA
Jon Cerr	Jordan Price
Alan Wiles	Bailey & Dixon LLP
Susan Valauri	Nationwide
Ann Bellamy	SBE
John Cole	Advantage Capital

Attachment # 3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Monday, August 11, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1)	**769**	Dropout Prevention/Drivers License.	
		Draft Number:	PCS6316
		Sequential Referral:	Appropriations
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: HB 769

SENATE FINANCE COMMITTEE

THURSDAY, AUGUST 14, 1997

8:30 A.M. - ROOM 544 LOB

The Senate Finance Committee met. There were 19 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order and introduced the Pages, they are Kathleen Cox from Greenville, N. C., sponsored by Senator Warren, Curtis Dickens from Raleigh, N. C., sponsored by Senator Ballance and Knachelle Butler from Wendell, N. C., sponsored by Senator Ballance.

H. B. 566 - Wake Schools Development Changes

Senator Reeves came to explain the bill. He moved for adoption of a proposed committee substitute, motion passed. Senator Kerr moved for a "favorable" report, motion passed.

S. B. 624 - Sedalia Incorporated (Guilford)

Senator William Martin came to explain the bill. Senator Foxx moved for a "favorable" report, motion passed.

Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report is Attachment # 3

Attachment #1

AGENDA

FOR

SENATE FINANCE MEETING

THURSDAY, AUGUST 14, 1997

8:30 A.M., ROOM 544, LOB

H.B. 566 - WAKE SCHOOLS DEVELOPMENT CHANGES - REP. ELLIS

S.B. 624 - SEDALIA INCORPORATED (GUILFORD) - SEN.W.MARTIN

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 566
Committee Substitute Favorable 7/3/97

Short Title: Wake Schools Development Charges. (Local)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT EXEMPTING THE WAKE COUNTY PUBLIC SCHOOL SYSTEM FROM DEVELOPMENT CHARGES RELATED TO THE CONSTRUCTION, RENOVATION, AND REPAIR OF PUBLIC SCHOOL SYSTEM INFRASTRUCTURE FACILITIES IN WAKE COUNTY AND THE MUNICIPALITIES THEREIN.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, the Wake County Public School System shall be exempt from development charges assessed by Wake County or any municipality having territory within Wake County where the development charge is assessed against the construction, renovation, or repair of public school infrastructure facilities.

Section 2. For the purposes of this act:

(a) "Development charge" means any:

(1) Impact fee, facility fee, development fee, project fee, regulatory fee, or other similar fee assessed in connection with the construction, renovation, or repair of a public school infrastructure facility where the fee is based on the student seating capacity of the facility.

(2) Water and sewer acreage fee when the Wake County Public School System has installed water and sewer improvements.

(3) Transportation development fee when the Wake County Public School System has installed transportation improvements.

(4) Utility tap fee.
(5) Plan review fee.
(6) Building permit fee.
(7) Fee to place a mobile classroom unit on property owned by the Wake County Public School System.

(b) "Public school infrastructure facility" means any building, structure, or other facility used or to be used by the Wake County Public School System for instructional, administrative, or maintenance purposes. The term includes mobile classroom units.

Section 3. This act is effective when it becomes law and applies to Wake County Public School System construction, renovation, and repair projects started or in progress on or after that date, except that any valid development charge that accrued prior to that date shall remain valid and payable by the Wake County Public School System.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 566
Committee Substitute Favorable 7/3/97
Proposed Committee Substitute H566-PCS7368

Short Title: Wake Schools Development Charges. (Local)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT EXEMPTING THE WAKE COUNTY PUBLIC SCHOOL SYSTEM AND QUALIFIED NONPUBLIC SCHOOLS OF WAKE COUNTY FROM DEVELOPMENT CHARGES RELATED TO THE CONSTRUCTION, RENOVATION, AND REPAIR OF SCHOOL INFRASTRUCTURE FACILITIES IN WAKE COUNTY AND THE MUNICIPALITIES THEREIN, AND TO CHANGE SEVERAL OTHER LAWS AFFECTING WAKE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, the Wake County Public School System and qualified nonpublic schools of Wake County shall be exempt from development charges assessed by Wake County or any municipality having territory within Wake County where the development charge is assessed against the construction, renovation, or repair of school infrastructure facilities.

Section 2. For the purposes of this act:

(a) "Development charge" means any:

(1) Impact fee, facility fee, development fee, project fee, regulatory fee, or other similar fee assessed in connection with the construction, renovation, or repair of a school infrastructure facility where the fee is based on the student seating capacity of the facility.

(2) Water and sewer acreage fee when the Wake County Public School System or a qualified nonpublic school has installed water and sewer improvements.

(3) Transportation development fee when the Wake County Public School System or a qualified nonpublic school has installed transportation improvements.
(4) Utility tap fee.
(5) Plan review fee.
(6) Building permit fee.
(7) Fee to place a mobile classroom unit on property owned by the Wake County Public School System or qualified nonpublic school.

(b) "School infrastructure facility" means any building, structure, or other facility used or to be used by the Wake County Public School System or qualified nonpublic school for instructional, administrative, or maintenance purposes. The term includes mobile classroom units.

(c) "Qualified nonpublic school" means a school having an enrollment of 20 or more students, and that has one or more of the characteristics set out in G.S. 115C-555.

Section 3. Chapter 279 of the 1989 Session Laws of North Carolina is repealed.

Section 4. Section 4 of Chapter 441 of the 1995 Session Laws reads as rewritten:

"**Sec. 4.** This act is effective upon ratification. ~~This act shall sunset July 1, 1997.~~"

Section 5. G.S.90-95.3(b) reads as rewritten:

"(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars ($100.00) to the State of North Carolina or to a unit of local government for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General ~~Fund.~~ Fund, or with a unit of local government if it provided the controlled substance analysis."

Section 6. Sections 1 and 2 of this act become effective when they become law and apply to Wake County Public School System or Wake County qualified nonpublic school construction, renovation, and repair projects for which a building permit is issued on or after that date. Any valid development charge that accrued prior to the effective date of this act on a project for which a building permit was issued prior to the effective date of this act shall remain valid and payable by the school system or school.

Section 7. Sections 3, 4, 5, and 7 of this act apply only to Wake County. Section 4 of this act is effective retroactively from July 1, 1997. Sections 3, 5, and 7 of this act become effective when they become law. Any process served pursuant to Chapter 441 of the 1995 Session Laws from July 1, 1997, until the date this act becomes law is validated by this act.

EXPLANATION OF HOUSE BILL 566 (Senate PCS):
Wake Schools Development Charges

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: August 13, 1997
SPONSOR: Representative Ellis

House Bill 566 is a local bill that exempts the Wake County Public School System and qualified nonpublic schools in Wake County from development charges assessed by Wake County or any municipality with territory in Wake County if the development charge is assessed against the construction, renovation, or repair of school infrastructure facilities. The proposed committee substitute adds qualified nonpublic schools to this exemption and also adds the sections dealing with changes in Wake County regarding restitution for drug analyses, the authority to close streets and alleys in the extraterritorial jurisdiction of the County, and the appointment of private process servers.

A "school infrastructure facility" is any building, structure, or other facility used or to be used by the Wake County public school system or qualified nonpublic school for instructional, administrative, or maintenance purposes. The term includes mobile classroom units.

A "qualified nonpublic school" means a school with an enrollment of at least 20 students and that has one or more of the following characteristics:

(1) It is accredited by the State Board of Education
(2) It is accredited by the Southern Association of Colleges and Schools.
(3) It is an active member of the N.C. Association of Independent Schools.
(4) It receives no funding from the State.

A "development charge" means the following:

- Impact fee, facility fee, development fee, project fee, regulatory fee, or other similar fee assessed in connection with the construction, renovation, or repair of a school infrastructure facility where the fee is based on the student seating capacity of the facility.
- Water and sewer acreage fee when the county school system or a qualified nonpublic school has installed water and sewer improvements.

- Transportation development fee when the county school system or qualified nonpublic school has installed transportation improvements.
- Utility tap fee
- Plan review fee
- Building permit fee
- Fee to place a mobile classroom unit on property owned by the county school system. or qualified nonpublic school.

Section 3 of the Bill repeals the law that took away the authority of municipalities in Wake County to close streets and alleys located within a municipality's extraterritorial jurisdiction.

Section 4 removes the sunset provision from the law that allows civil process papers, except executions and summary ejectments, to be served by a private process server appointed by the clerk of court. This law was enacted in 1995 and applies only to Wake County.

Section 5 rewrites the section of the Controlled Substances Act regarding restitution for drug analyses to provide that a person convicted under the Act may be ordered to pay restitution to a unit of local government if the unit of local government provides the controlled substance analysis. The section now provides that restitution goes only to the State and is deposited in the General Fund. This section applies only to Wake County.

Section 1 and 2 of the act are effective when they become law and apply to Wake County Public School System or Wake County qualified nonpublic school projects for which a building permit is issued on or after the effective date of the act, except that any "valid development charge" that accrued prior to that date shall remain valid and payable by the school system or school.

Section 3, 4, 5, and 7 apply only to Wake County. Section 4 is effective retroactively from July 1, 1997. Any process served pursuant to the 1995 Wake County law, after July 1, 1977 but before this act becomes law, is validated by this act. Sections 3, 5, and 7 are effective when they become law..

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 624
Rules and Operations of the Senate Committee Substitute Adopted 8/13/97

Short Title: Sedalia Incorporated (Guilford). (Local)

Sponsors:

Referred to: Finance.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF SEDALIA.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Sedalia is enacted to read:

"CHARTER OF THE TOWN OF SEDALIA.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Sedalia are a body corporate and politic under the name 'Town of Sedalia'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Sedalia are as follows:

BEGINNING at a point, said point being in the south right-of-way line of Bethel Church Road, said point being the northwest corner of Guilford County Tax Map ACL 18-1173, Block 242, Lot 24; thence running along said right-of-way line in an easterly direction a distance of approximately 1,500 feet to the northeast corner of Lot 7 on Guilford County Tax Map ACL 18-1173, Block 242; thence along the eastern line of said Lot 7 a distance of approximately 290 feet to a point, said point being in the northern line of Sedalia Country Park Subdivision; thence in an easterly direction along the northern line of Sedalia Country Park Subdivision and the

southern property lines of Guilford County Tax Map ACL 18-1173, Block 242, Lots 4, 15, and 52 and Block 207, Lot 8 a distance of approximately 3340 feet to a point, said point being the northeast corner of Guilford County Tax Map ACL 18-1173, Block 207, Lot 19; thence along the eastern lines of Lots 19 and 11 of said Block in a southerly direction a distance of approximately 1660 feet to a point, said point being the northwest corner of College Heights Subdivision, said point also being the southwest corner of said Block 207, Lot 12; thence in an easterly direction along the northern line of College Heights Subdivision, as recorded in P.B. 34, Page 54 in the Office of Guilford County Register of Deeds, a distance of approximately 1850 feet to a point in the west right-of-way line of Sedalia Road; thence in an easterly direction a distance of approximately 60 feet to a point in the east right-of-way line of Sedalia Road at the southwest corner of Guilford County Tax Map ACL 18-1173, Block 207, Lot 17; thence in an easterly direction along the southern lines of lots 17 and 2 of said block a distance of approximately 970 feet to a point, said point being the southeast corner of said Lot 2; thence South 84°41' East a distance of 839 feet to a point; thence South 65°46' West a distance of 229 feet to a point; thence South 57°03' West a distance of 298 feet to a point; thence South 38°22' West a distance of 248 feet to a point; thence South 13°19' West a distance of 136 feet to a point; thence South 63°02' West a distance of 585 feet to a point; thence South 28°14' East a distance of 443 feet to a point; thence South 04°47' West a distance of 1,151 feet to a point, said point being a common corner with Stoney Creek Golf Course; thence South 88°16' East along the western golf course line a distance of 154 feet to a point; thence South 03°06' East a distance of 620 feet to a point; thence South 70°34' West a distance of 234 feet to a point; thence South 30°53' East a distance of 544 feet to a point; thence South 06°26' West a distance of 341 feet to a point; thence South 49°11' West a distance of 630 feet to a point; thence South 36°48' East a distance of 207 feet to a point; thence South 23°01' West a distance of 1705 feet to a point, a common corner with Totten Subdivision; thence South 60°01' East with the Totten Subdivision a distance of 339 feet to a point; thence North 32°12' East a distance of 37 feet to a point; thence South 58°21' East a distance of 387 feet to a point; thence South 36°44' West a distance of 382 feet to a point; thence South 50°12' East a distance of 81 feet to a point; thence South 23°28' West a distance of approximately 170 feet to a point on the north right-of-way line of Burlington Road; thence along said right-of-way line in a westerly direction a distance of 124 feet to a point; thence in a southwesterly direction, crossing Burlington Road, a distance of approximately 100 feet to the northeast corner of Guilford County Tax Map ACL 18-1175, Block 209, Lot 42; thence in a southwesterly direction along the eastern lines of Guilford County Tax Map ACL 18-1175, Block 209, Lots 42, 41, and 40 a distance of approximately 580 feet to a point, said point being the southeast corner of said Lot 40; thence in a northwesterly direction along the southern lines of Guilford County Tax Map ACL 18-1175, Block 209, Lots 40, 10, 39, 35, 36, 37, 21 and 56 a distance of approximately 1860 feet to the western line of Lot 15 on said Block 209; thence in a southerly direction of distance of approximately 120 feet along the eastern line of said Lot 15 to the southeast corner of Lot 15; thence in a westerly direction along the

southern lines of Lots 15 and 32 of said Block 209 a distance of approximately 690 feet to a point, said point being a common corner of Lots 32 and 63 of said Block 209, thence in a southerly direction along the western lines of Lots 63 and 4 of said Block 209 a distance of approximately 1100 feet to a point; thence in a westerly direction along a portion of the western line of said Lot 4 a distance of approximately 190 feet to a point, said point being the northeast corner of Guilford County Tax Map ACL 18-1175, Block 209, Lot 64; thence in a southerly direction along the eastern line of Lot 64, and a projection of that line crossing Lot 4 of said block, a distance of approximately 460 feet to a point, said point being in the northern line of Guilford County Tax Map ACL 18-1175, Block 209, Lot 51; thence in an easterly direction a distance of approximately 480 feet along the northern line of said Lot 51 to a point, said point being the northeast corner of said Lot 51; thence in a southerly direction along the eastern lines of Lots 51, 48, and 61 of said Block 209 a distance of approximately 330 feet to a point, said point being the southeast corner of said Lot 61; thence in a westerly direction a distance of approximately 260 feet to a point, said point being the northeast corner of Lot 55 of said Block 209; thence in a southwesterly direction a distance of approximately 260 feet along the eastern line of said Lot 55 to a point; thence in a westerly direction along the southern line of said Lot 55 and crossing Palmer Road, a distance of approximately 240 feet to a point in the west right-of-way line of Palmer Road; thence in a northerly direction along said right-of-way line a distance of approximately 1900 feet to a point, said point being the southeast corner of Guilford County Tax Map ACL 18-1175, Block 240, Lot 24; thence in a westerly direction along the southern line of said Lot 24 a distance of approximately 1100 feet to a point in the eastern line of Lot 8 of said Block 240, thence along the common line of said Lots 8 and 24 in a northerly direction a distance of approximately 460 feet to the northeast corner of said Lot 8; thence in a westerly direction along the northern line of said Lot 8 a distance of approximately 1200 feet to a point, said point being the southwest corner of Lot 22 of said Block 240; thence in a northerly direction along the common line of Lots 22 and 8 of said block a distance of approximately 1060 feet to a point, said point being in the south right-of-way line of Burlington Road; thence along said right-of-way line in a northwesterly direction a distance of approximately 560 feet to a point in the west right-of-way line of Bloomfield Road; thence in a southerly direction along said west right-of-way line a distance of approximately 220 feet to a point; said point being the northeast corner of Guilford County Tax Map ACL 18-1175, Block 240, Lot 21; thence in a westerly direction along the northern line of said Lot 21 a distance of approximately 580 feet to the northwest corner of said Lot 21; thence in a northerly direction along the western line of Block 241, Lot 41 a distance of approximately 430 feet to the northwest corner of said Lot 41; thence in an easterly direction along the northern line of said Lot 41 a distance of approximately 300 feet to a point in the south right-of-way line of Burlington Road; thence along said right-of-way line in a northwesterly direction a distance of approximately 420 feet to a point on the southern line of Guilford County Tax Map ACL 18-1175, Block 241, Lot 28; thence in a westerly direction along the southern lines of Lots 28 and 10 of said Block 241 a

distance of approximately 970 feet to the southwest corner of said Lot 10; thence in a northerly direction along the western lines of Lots 10 and 25 of said Block 241 a distance of approximately 450 feet to a point; thence in a northwesterly direction along the southwestern line of Lot 24 of said Block 241 a distance of approximately 90 feet to a point; thence in a northeasterly direction along the northwestern line of said Lot 24 a distance of approximately 380 feet to a point, said point being in the south right-of-way line of Burlington Road; thence in a southeasterly direction along said right-of-way line a distance of approximately 230 feet to a point, said point being on a common property line of Lots 25 and 24 of said block; thence in a northeasterly direction, crossing Burlington Road, a distance of approximately 60 feet to the westernmost corner of Lot 26 of said Block 241; thence following the northern line of said Lot 26 a distance of approximately 680 feet in a northeasterly direction to a point, said point being the southwest corner of Imperial Estates Subdivision; thence in a northerly direction along the western line of Imperial Estates Subdivision a distance of approximately 990 feet to a point; thence along the northwestern line of said subdivision a distance of approximately 1,040 feet in a northeasterly direction to the northwest corner of said subdivision; thence in a westerly direction along the southern line of Guilford County Tax Map ACL 18-1173, Block 242, Lot 46 a distance of approximately 50 feet to a point; thence along the southwestern lines of Lots 46, 14 and 13 of said Block 242 in a northwesterly direction a distance of approximately 600 feet to a point; thence along the southern line of said Lot 13 in a westerly direction a distance of approximately 390 feet to a point, said point being the southwest corner of Lot 13; thence in a northerly direction along the western lines of Guilford County Tax Map ACL Map 18-1173, Block 242, Lots 13, 12, 11, 10, 35 and 30 a distance of approximately 1700 feet to a point, said point being the southeast corner of Lot 23 of said Block 242; thence in a southwesterly direction along the south line of said Lot 23 a distance of approximately 430 feet to the southwest corner of said Lot 23; thence in a northerly direction along the western lines of Lots 23, 28 and 24 of said Block 242 a distance of approximately 1140 to a point; thence in a westerly direction a distance of approximately 100 feet along said Lot 24 to a point; thence in a northerly direction a distance of approximately 140 feet along the western line of said Lot 24 to a point in the south right-of-way line of Bethel Church Road, said point being the POINT OF BEGINNING.

"Sec. 2.2. **Annexations.** (a) Article 4A of Chapter 160A of the General Statutes does not apply to the Town of Sedalia until July 1, 2017.

(b) G.S. 160A-58.1(b)(2) shall not apply to the City of Greensboro as it relates to the Town of Sedalia.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Sedalia is the Town Council, which has five members.

"Sec. 3.2. **Manner of Electing Council.** The qualified voters of the entire Town elect the members of the Council.

"Sec. 3.3. **Term of Office of Council Members.** Members of the Council are elected to four-year terms. In 1997 and quadrennially thereafter, three members of the Council shall be elected for four-year terms. In 1999 and quadrennially thereafter, two members of the Council shall be elected for four-year terms.

"Sec. 3.4. **Election of Mayor; Term of Office.** At the organizational meeting of the Council following each election, the Council shall elect one of its members to serve as Mayor. The Mayor serves as such at the pleasure of the Council.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Town Elections.** Town officers shall be elected on a nonpartisan basis. Elections shall be conducted in accordance with Chapter 163 of the General Statutes.

"Sec. 4.2. **Determination of Election Results.** The results of election of officers shall be determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Sedalia operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. (a) Until the organizational meeting of the Town Council of Sedalia following the 1997 municipal election, Ruth Smith, Skip Corley, Myra Lynn, Henry Blackmon, and Duane Bryant shall serve as members of the Town Council. Ruth Smith, Henry Blackmon, and Duane Bryant serve until the organizational meeting after the 1997 election. Skip Corley and Myra Lynn serve until the organizational meeting after the 1999 election.

(b) Ruth Smith shall serve as Mayor until the organizational meeting of the Town Council after the 1997 election, except that she shall serve at the pleasure of the Town Council as if she had been chosen by them under Section 3.4 of the Charter.

(c) The initial meeting of the Town Council shall be called by the clerk to the Guilford County Board of Commissioners.

Section 3. From and after the effective date of this act, the citizens and property in the Town of Sedalia shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the Village shall obtain from Guilford County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1997; and the businesses in the town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1997-98, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1997. The

Town of Sedalia is eligible to receive distributions of State funds during fiscal year 1997-98.

Section 4. (a) The Guilford County Board of Elections shall establish a special candidate filing period for the Town of Sedalia for the 1997 municipal election.

(b) The Guilford County Board of Elections may establish a special election date for the 1997 municipal election for the Town of Sedalia.

Section 5. This act is effective when it becomes law.

EXPLANATION OF SENATE BILL 624 (2nd Edition) Local: *Sedalia Incorporated (Guilford)*

TO: Senate Finance Committee
FROM: Committee Counsel
DATE: August 14, 1997
SPONSOR: Senators Martin, Blust, and Shaw

Senate Bill 624 incorporates the town of Sedalia. The incorporation does not have a referendum.

Sec. 2.1 of the Charter sets out the corporate boundaries.

Sec. 2.2 provides that the Town may not do any voluntary or involuntary annexations under the general law for 20 years. This section further provides that for satellite annexations of Greensboro, the proximity to Sedalia would not be considered. Under general law, satellite annexations by Greensboro could not take place if the area was closer to Sedalia than to Greensboro. The Charter further provides that the governing body of the Town will be a town council with five members The Town will operate under a Mayor-Council plan.

Section 4(a) of the bill directs the Guilford County Board of Elections to establish a special filing period. This is necessary since the normal general law candidate filing period has already passed for the 1997 municipal election. Section 4(b) allows the Guilford County Board of Elections to hold the regular municipal election later than the November date set by general law. This is necessary because the bill must be precleared by the U.S. Department of Justice under Section 5 of the Voting Rights Act.

The act is effective when it becomes law.

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

8/14/97

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bernard Allen	Secy. of State
James Stem	UTU
Mike Carreker	NCBBA
R Paul Wilms	NCHBA
John Bode	Bode Call & Stroupe
[illegible]	NC Assoc of Realtors
Bob Scott	Lobbyist
Susan Everett	Rep. Ellis (1303 LB)
Alice Garland	Electricities
Jim Mixon	Sprint
[illegible]	[illegible]
Steve Keene	NCNS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

8/14/97

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Hunt	MCWC
Ed Regan	N.C.A.C.C.

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, August 14, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

S.B.(CS #1)**624** Sedalia Incorporated (Guilford)
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**566** Wake Schools Development Charges
Draft Number: PCS7368
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

MONDAY, AUGUST 18, 1997

ON THE SENATE FLOOR
(During Session)

The Senate Finance Committee met during session on August 18, 1997, with Senator Soles presiding. Committee members present for session were present for the meeting.

S.B. 1065 - Amend N.C. Law

A proposed committee substitute was explained for S.B. 1065 and upon motion by Senator Kerr, the PCS was adopted by the committee. Senator Kerr moved for a "favorable" report for the committee substitute and the motion carried. Copy of bill, committee substitute, explanation and fiscal note included with the minutes.

H.B. 590 - Wilson's Mills Charter

Senator Wellons explained this bill and on his motion the bill was given a "favorable" report by the committee. Copy of bill included in the minutes.

Meeting adjourned.

R. C. Soles, Vice Chairman of Finance Committee

Evelyn S. Hartsell

Evelyn S. Hartsell, Clerk

NOTE:

Copy of Committee Reports is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

FILED - SENATE

S 1065 APR 17 1997

PRINCIPAL CLERK

S

SENATE DRSA732-LC123B(3.9)

Short Title: Amend N.C. Law. (Public)

Sponsors: Senator Hoyle.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 1065
Proposed Committee Substitute S1065-PCSX2809

Short Title: Exempt Severance Pay. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE INCOME TAX EXCLUSION FOR SEVERANCE PAY TO INCLUDE SEVERANCE PAY DUE TO AN EMPLOYEE'S INVOLUNTARY TERMINATION THROUGH NO FAULT OF THE EMPLOYEE.

The General Assembly of North Carolina enacts:

Section 1. G. S. 105-134.6(b)(11) reads as rewritten:

"(11) The amount paid to the taxpayer as severance wages during the taxable year as the result of the ~~permanent closure of a manufacturing or processing plant,~~ taxpayer's permanent, involuntary termination from employment through no fault of the employee, not to exceed a maximum of thirty-five thousand dollars ($35,000) ~~for the taxable year.~~ when added to the amount of severance wages paid to the taxpayer by the same employer during the two preceding taxable years."

Section 2. This act is effective for taxable years beginning on or after January 1, 1998.

EXPLANATION OF SENATE BILL 1065:
Exempt Severance Pay (PCS)

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 15, 1997
SPONSOR: Senator Hoyle

The proposed committee substitute for Senate Bill 1065 would expand the income tax exclusion for severance pay due to closing of a manufacturing plant and would modify the cap on the exclusion, effective beginning with the 1998 tax year. Except for the effective date, the bill is identical to House Bill 1170, introduced by Representative Buchanan.

In 1996, the General Assembly enacted an income tax exclusion for severance pay a taxpayer receives due to the permanent closure of a manufacturing or processing plant, not to exceed a maximum of $35,000 for the taxable year. The exemption was expected to reduce General Fund revenues by approximately $4 million a year. This bill modifies the exemption in three ways:

1. It expands the tax exemption to severance pay received due to any involuntary termination through no fault of the employee. The expanded exemption would include being fired without cause, being laid off due to a reduction in force, as well as being terminated due to a plant closure. It would not include voluntary early retirement or being fired for cause.

2. It expands the tax exemption to cover any type of job in the private or public sector, not just a job at a manufacturing plant.

3. It closes a loophole in the $35,000 cap. Some companies were able to avoid the $35,000 cap by paying part of the severance pay in December and the rest in January. The bill closes this loophole by clarifying that the $35,000 cap applies to the total amount paid over the most recent three-year period.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: SB 1065 (Proposed SCS S1065-PCSX2809)
SHORT TITLE: Exempt Severance Pay

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES ($Mill.) State General Fund		**-$2.09**	**-$2.21**	**-$2.35**	**-$2.49**

PRINCIPAL DEPARTMENT AFFECTED: The personal income tax is administered by the Department of Revenue.

EFFECTIVE DATE: Tax years beginning on or after January 1, 1998.

BILL SUMMARY: The 1996 General Assembly enacted legislation that exempted the first $35,000 of severance pay that results from the permanent closure of a manufacturing or processing plant. The committee substitute expands the exemption to severance pay that results from "the taxpayer's permanent, involuntary termination from employment through no fault of the employee". Thus, the exemption would not be restricted to manufacturing and processing industries and to the permanent closing of such employers. In addition, the new language would cap the exemption at $35,000 for the current tax year plus the two preceding tax years.

ASSUMPTIONS AND METHODOLOGY: The starting point for the calculation of the tax loss is a 1995 and 1996 calendar year tabulation of announced business closings and layoffs by the Employment Security Commission. This data is derived from a survey of newspaper accounts and from information supplied to ESC from employers experiencing the layoffs and closings. ESC indicates that the tabulation may not include all situations. On the other hand, some of the announced closing and layoffs may not actually occur. In addition, data for April-December 1995 from the Mass Layoff Statistics tabulation of ESC was available to compare to the industry mix of layoffs and closings under newspaper tabulation. The mass layoff data applies only to employers with at least 50 employees and thus is not a complete count.

For the purpose of this analysis it is assumed that 60% of the industries affected by the bill (non-manufacturing) provide severance pay. For manufacturing and processing, the assumed ratio for the 1996 bill was 75%. This data is based on the results of a survey by Lee Hecht Harrison,

(OVER)

personnel consultants (found on the Internet). The nationwide numbers were adjusted downward to get to North Carolina estimates due to the lower pay and benefits in the state, relative to the U.S. A report by Challenger, Gray, and Christmas, Inc., specialists in tabulating layoff data, indicates that the median severance pay package has dropped from 16.7 weeks in 1993 to 12 weeks in the first quarter of 1997. In this analysis, a figure of 8 weeks is used because the legislation affects the nonmanufacturing sectors and the fact the private sector benefits are generally lower in North Carolina.

The average annual pay for nonmanufacturing private sector workers was $22,937 for the 3rd quarter of 1996.

Finally, a marginal tax rate of 6.5% was used to calculate the tax savings. The analysis assumes that all eligible taxpayers are able to use the full amount of the exemption.

The expanded definition includes severance pay in cases other than permanent layoffs and establishment closings. There is no data to determine the impact of these other situations but it is felt that these numbers will be relatively small. In addition, the impact of applying the $35,000 cap to a 3-year period instead of one tax year is expected to be minimal.

A growth rate of 6% was used to project the future year impact of the bill. This approximates the rate used in the General Fund Financial Model

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
APPROVED BY: TOM COVINGTON
DATE: August 18, 1997

SENATE FINANCE COMMITTEE

WEDNESDAY, AUGUST 20, 1997

8:30 A. M. - ROOM 544 LOB

The Senate Finance Committee met. There were 20 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order and introduced the Pages, they are Nathan Garner from Wake Forest, N. C., sponsored by Senator Carrington, R. Danielle Csolak from Fuquay-Varina, N. C., sponsored by Senator Plyler, Nadia Stone from Clayton, N. C., sponsored by Senator Ballance and Sara Flowers from Winston-Salem, N. C., sponsored by Senator McDaniel.

H. B. 13 - Simplify and Reduce Inheritance Tax

Representative Cansler came to explain the bill. Senator Lee moved for adoption of a proposed committee substitute, motion passed. Senator Kerr sent forth an amendment to change on Page 2, line 5 of proposed committee substitute by deleting July 1, 2001 and substituting October 1, 2000 and made a motion for adoption, motion passed. Senator Dannelly moved for a "favorable" report and roll into a new committee substitute, motion passed.

H. B. 469 - Permit Fees

Representative Tallent came to explain the bill. Mr. T. Jerry William with the N. C. Restaurant Association spoke on the bill. Mr. Michael Rhodes with DEHNR spoke on the bill. Senator Albertson moved for a "favorable" report, motion passed.

H. B. 1137 - Soil and Water Conservation Plates

Representative Culp came to explain the bill. Senator Kerr sent forward an amendment to the bill and made a motion for the adoption of amendment, motion passed. Senator Webster moved for a "favorable" report and have amendment rolled into a committee substitute, motion passed.

H. B. 115 - 1997 Technical Corrections

Senator Cooper came to explain the bill. Mr. Gerry Cohn, Director of Bill Drafting, spoke on the bill. Senator Kerr moved to amend the bill, motion passed.. Senator Rand made a motion for a "favorable" report as amended and roll into a committee substitute, motion passed.

Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitor's Registration is Attachment # 2
Committee Report is Attachment # 3

Attachment #1

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, AUGUST 20, 1997

8:30 A.M., ROOM 544, LOB

H.B. 13 - SIMPLIFY AND REDUCE INHERITANCE TAX - REP. CANSLER

H.B. 115 - 1997 TECHNICAL CORRECTIONS - REP. CULPEPPER

H.B. 469 - PERMIT FEES - REP. TALLENT

H.B. 1137 - SOIL AND WATER CONSERVATION PLATES - REP. CULP

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 13

Short Title: Simplify and Reduce Inheritance Tax. (Public)

Sponsors: Representatives Cansler, Blue, Capps, Church, Neely, Shubert; Aldridge, Baker, Beall, Black, Brown, Creech, Davis, Dedmon, Dockham, Gardner, Goodwin, Hall, Hardy, Hill, Ives, McComas, McMahan, Mitchell, Moore, Morris, Preston, Ramsey, Rayfield, Sexton, Smith, Starnes, Tolson, Warner, Watson, Weatherly, and G. Wilson.

Referred to: Finance.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY AND REDUCE INHERITANCE TAXES.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-6.1. Phaseout of inheritance tax.**

When this Article imposes an inheritance tax on property transferred by a decedent but no state death tax credit is allowed under section 2011 of the Code against federal estate tax due on the transfer of the decedent's estate, the amount of inheritance tax is reduced by the appropriate percentage in the phaseout table set out below. When this Article imposes an inheritance tax on property transferred by a decedent and a state death tax credit is allowed under section 2011 of the Code against federal estate tax due on the transfer of the decedent's estate, the amount of inheritance tax that exceeds the maximum credit for state death taxes is reduced by the appropriate percentage in the following phaseout table:

Calendar Year of Decedent's Death	Percentage Reduction
1998	20%
1999	40%
2000	60%
2001	80%

2002 and after 100%."

Section 2. Effective January 1, 2002, Article 1 of Chapter 105 of the General Statutes is repealed.

Section 3. Effective January 1, 2002, Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Estate Taxes.

"§ 105-32.1. Definitions.

The following definitions apply in this Article:

(1) Code. -- Defined in G.S. 105-228.90.

(2) Personal representative. -- The person appointed by the clerk of superior court under Chapter 28A of the General Statutes to administer the estate of a decedent or, if no one is appointed under that Chapter, the person required to file a federal estate tax return for the estate of the decedent.

(3) Secretary. -- Defined in G.S. 105-228.90.

"§ 105-32.2. Estate tax imposed in amount equal to federal state death tax credit.

(a) Tax. -- An estate tax is imposed on the estate of a decedent when a federal estate tax is imposed on the estate under section 2001 of the Code and any of the following apply:

(1) The decedent was a resident of this State at death.

(2) The decedent was not a resident of this State at death and owned any of the following:

a. Real property or tangible personal property that is located in this State.

b. Intangible personal property that has a tax situs in this State.

(b) Amount. -- The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the Code. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate.

"§ 105-32.3. Liability for estate tax.

(a) Primary. -- The tax imposed by this Article is payable from the assets of the estate. A person who receives property from an estate is liable for the amount of estate tax attributable to that property.

(b) Personal Representative. -- The personal representative of an estate is liable for an estate tax that is not paid within two years after it was due. This liability is limited to the value of the assets of the estate that were under the control of the personal representative. The amount for which the personal representative is liable may be recovered from the personal representative or from the surety on any bond filed by the personal representative under Article 8 of Chapter 28A of the General Statutes.

(c) Clerk of Court. -- A clerk of court who allows a personal representative to make a final settlement of an estate without presenting one of the following is liable on the clerk's bond for any estate tax due:

(1) An affirmation by the personal representative certifying that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.

(2) A certificate issued by the Secretary stating that the tax liability of the estate has been satisfied.

"§ 105-32.4. Payment of estate tax.

(a) Due Date. -- The estate tax imposed by this Article is due when an estate tax return is due. An estate tax return is due on the date a federal estate tax return is due.

(b) Filing Return. -- An estate tax return must be filed under this Article if a federal estate tax return is required. The return must be filed by the personal representative of the estate on a form provided by the Secretary.

(c) Extension. -- An extension of time to file a federal estate tax return is an automatic extension of the time to file an estate tax return under this Article. The Secretary may, in accordance with G.S. 105-263, extend the time for paying the estate tax imposed by this Article or for filing an estate tax return.

(d) Interest and Penalties. -- The penalties in G.S. 105-236 apply to the failure to file an estate tax return or to pay an estate tax when due. Interest at the rate set in G.S. 105-241.1 accrues on estate taxes paid after the date they are due.

(e) Obtaining Amount Due. -- The personal representative of an estate may sell assets in the estate to obtain money to pay the tax imposed by this Article.

"§ 105-32.5. Making installment payments of tax due when federal estate tax is payable in installments.

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal estate tax under section 6166 of the Code. Acceleration of payments under section 6166 of the Code accelerates the payments due under this section.

"**§ 105-32.6. Estate tax is a lien on real property in the estate.**

The tax imposed by this Article on an estate is a lien on the real property in the estate and on the proceeds of the sale of the real property in the estate. The lien is extinguished when one of the following occurs:

(1) The personal representative certifies to the clerk of court that no tax is due on the estate because this Article does not require an estate tax return to be filed for that estate.

(2) The Secretary issues a certificate stating that the tax liability of the estate has been satisfied.

(3) For specific real property, when the Secretary issues a tax waiver for that property.

(4) Ten years have elapsed since the date of the decedent's death.

"**§ 105-32.7. Generation-skipping transfer tax.**

(a) Tax. -- A tax is imposed on a generation-skipping transfer that is subject to the tax imposed by Chapter 13 of Subtitle B of the Code when any of the following apply:

(1) The original transferor is a resident of this State at the date of the original transfer.

(2) The original transferor is not a resident of this State at the date of the original transfer and the transfer includes any of the following:

a. Real or tangible personal property that is located in this State.

b. Intangible personal property that has a tax situs in this State.

(b) Amount. -- The amount of the tax imposed by this section is the maximum credit for state generation-skipping transfer taxes allowed under section 2604 of the Code. If property in the transfer is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the original transferor was a resident of this State at the date of the original transfer, the North Carolina percentage is the net value of the property transferred that does not have a tax situs in another state, divided by the net value of all property transferred. If the original transferor was not a resident of this State at the date of the original transfer, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property transferred, unless the original transferor's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the original transferor's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in a transfer is its gross value reduced by any debts secured by the property.

(c) Payment. -- The tax imposed by this section is due when a return is due. A return is due the same date as the federal return for payment of the federal generation-skipping transfer tax. The tax is payable by the person who is liable for the federal generation-skipping transfer tax.

"§ 105-32.8. Federal determination that changes the amount of tax payable to the State.

If the federal government corrects or otherwise determines the amount of the maximum state death tax credit allowed an estate under section 6166 of the Code, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within two years after being notified of the correction or final determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination."

Section 4. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that was available under the amended or repealed statute before the effective date of its amendment or repeal.

Section 5. Section 1 of this act becomes effective January 1, 1998, and applies to the estates of decedents dying on or after that date. Sections 2 and 3 of this act become effective January 1, 2002, and apply to the estates of decedents dying on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 13
Proposed Senate Committee Substitute H13-CSLC-8/16
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Reduce Inheritance Tax. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REDUCE INHERITANCE TAXES.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-6.1. Reduction of inheritance tax.

When this Article imposes an inheritance tax on property transferred by a decedent but no state death tax credit is allowed under section 2011 of the Code against federal estate tax due on the transfer of the decedent's estate, the amount of inheritance tax is reduced by nine percent (9%). When this Article imposes an inheritance tax on property transferred by a decedent and a state death tax credit is allowed under section 2011 of the Code against federal estate tax due on the transfer of the decedent's estate, the amount of inheritance tax that exceeds the maximum credit for state death taxes is reduced by nine percent (9%)."

Section 2. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the

amended or repealed statute before the effective date of its amendment or repeal.

Section 3. This act becomes effective July 1, 1998, and applies to the estates of decedents dying on or after that date. Section 1 of this act is repealed July 1, 2001, and applies to the estates of decedents dying on or after that date.

EXPLANATION OF HOUSE BILL 13 (PCS 8/16):
Reduce Inheritance Tax

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 19, 1997
SPONSOR: Representative Cansler
Modified Recommendation of the Revenue Laws Study Committee

The proposed committee substitute for House Bill reduces the amount of inheritance tax payable by 9%. It becomes effective for decedents dying on or after July 1, 1998, and sunsets July 1, 2001. The original bill, which was recommended by the Revenue Laws Study Committee, would have phased the inheritance tax out over five years by reducing it 20% a year starting in 1998.

North Carolina imposes an inheritance tax on property transferred by a decedent. The amount of tax payable depends on the relationship of the person transferring the property (the decedent) to the person receiving the property (the beneficiary). This is in contrast to federal law, which has a single rate schedule for estates.

State law classifies beneficiaries into three classes, Class A, Class B, and Class C, and sets different inheritance tax rates for each class. A Class A beneficiary is a lineal ancestor, a lineal descendant, an adopted child, a step-child, or a son-in-law or daughter-in-law whose spouse is not entitled to any of the decedent's property. A Class B beneficiary is a sibling, a descendant of a sibling, or an aunt or uncle by blood. A Class C beneficiary is anyone who is not a Class A or Class B beneficiary.

Class A beneficiaries have the lowest inheritance tax rates and an inheritance tax credit that amounts to a $600,000 exemption. Class B beneficiaries have higher rates and no exemption. Class C beneficiaries have the highest rates and no exemption. Thus, North Carolina's rate structure favors transfers to children and parents by giving those transfers the lowest rates plus an exemption and prefers transfers to other close family members over transfers to more distant relatives or to persons who are not related.

The bill reduces the State inheritance tax liability by 9%. This liability is not reduced below the amount of the federal estate death tax credit, however. Therefore, the amount of tax paid by a person who is subject to State inheritance

tax but not the federal estate tax will be reduced by 9% and the amount paid by a person who owes federal estate tax and North Carolina inheritance tax will be reduced by 9% of the difference between the amount of inheritance tax owed and the amount of the federal state death tax credit. Class B and Class C beneficiaries are the groups likely to owe inheritance tax but not federal estate tax because they have no State exemption comparable to the federal.

Until its recent amendment, federal estate tax allowed a unified estate and gift tax credit that effectively exempted $600,000 of the total estate. The State's Class A exemption was increased in 1996 to mirror this exemption for State inheritance tax. The 1997 federal budget agreement gradually increases the $600,000 federal exemption until it reaches $1 million in 2006. The increases are listed in the table below.

Year	Exemption
1998	$ 625,000
1999	650,000
2000	675,000
2001	675,000
2002	700,000
2003	700,000
2004	850,000
2005	950,000
2006	1,000,000

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: House Bill 13 (PCS 8/16)
SHORT TITLE: Reduce Inheritance Tax

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
REVENUES						
General Fund		(2.50)	(10.60)	(11.36)	(9.00)	

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Personal Taxes Division, N.C. Department of Revenue

EFFECTIVE DATE: Deaths occurring between July 1, 1998 and July 1, 2001.

BILL SUMMARY: Provides for an across-the-board cut in the inheritance tax of 9% for a 3-year period beginning July 1, 1998.

ASSUMPTIONS AND METHODOLOGY: A compilation of 1993 inheritance tax returns was provided by the Department of Revenue. This tabulation showed tax liability by size of tax return and by class of beneficiary. In addition, the numbers included the North Carolina estate tax ("pickup tax") that is applied when the North Carolina inheritance tax is less than the federal estate tax credit for state death taxes.

SOURCES OF DATA:
Department of Revenue
Federal and State Inheritance Tax Returns
DRI, Forecast of State Personal Income

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: H. Warren Plonk, Dave Crotts
DATE: August 18, 1997

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 13 - CSLC-8/16 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 5,

by deleting "July 1, 2001," and substituting "October 1, 2000,".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 13
Proposed Senate Committee Substitute H13-PCS1454

Short Title: Reduce Inheritance Tax. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO REDUCE INHERITANCE TAXES.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-6.1. Reduction of inheritance tax.**

When this Article imposes an inheritance tax on property transferred by a decedent but no state death tax credit is allowed under section 2011 of the Code against federal estate tax due on the transfer of the decedent's estate, the amount of inheritance tax is reduced by nine percent (9%). When this Article imposes an inheritance tax on property transferred by a decedent and a state death tax credit is allowed under section 2011 of the Code against federal estate tax due on the transfer of the decedent's estate, the amount of inheritance tax that exceeds the maximum credit for state death taxes is reduced by nine percent (9%)."

Section 2. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 3. This act becomes effective July 1, 1998, and applies to the estates of decedents dying on or after that date. Section 1 of this act is repealed October 1, 2000, and applies to the estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 469
Committee Substitute Favorable 4/15/97
Committee Substitute #2 Favorable 7/21/97

Short Title: Permit Fees/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE A REINSTATEMENT FEE FOR PERMITS SUSPENDED FOR FAILURE TO PAY PERMIT FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Human Resources, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, an annual fee of twenty-five dollars ($25.00). The Department shall charge an additional twenty-five dollar ($25.00) late payment fee to any establishment that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend ~~or revoke~~ the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Department shall charge a reinstatement fee of one hundred fifty dollars ($150.00) to any establishment that requests reinstatement of its permit after the permit has been suspended. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local ~~public health~~ food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33-1/3%) of the fees collected may be used to support State health programs and activities."

Section 2. This act becomes effective July 1, 1998.

EXPLANATION OF HOUSE BILL 469:
Permit Fees

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 19, 1997
SPONSOR: Representative Tallent
Agency Bill

House Bill 469 establishes a reinstatement fee for establishments whose permits are suspended for failure to pay the permit fees at the recommendation of the State Auditor's Office. The reinstatement fee is established at $150. It also removes the ability of the Department of Human Resources to revoke a permit for failure to pay the permit fees. DHR may continue to suspend a permit.

Restaurants, bars, and other establishments that prepare and serve food or drinks as well as hotels, bed and breakfast inns, and other establishments that provide lodging must have a permit issued annually by the Department. The cost of the annual permit is $25. An establishment that fails to pay the fee within 45 days after billing by the Department is subject to a late payment fee of $25. If the establishments fails to pay the fee within 60 days after billing, the Department may suspend or revoke the permit.

Approximately 10% of the 23,000 permittees pay late. Approximately 300 of the 23,000 permittees have their permits suspended for not paying the fee within 60 days of billing. The Department must then begin court proceedings against these permittees for operating without a license. The State's cost to suspend a permit for failure to pay the required permit fee and to initiate court action against an establishment operating with a suspended permit is approximately $866, as determined by the Office of the State Auditor in its Performance Audit of the Food Sanitation Inspection Program within the Department of Environment, Health, and Natural Resources. In its audit, the Office of the State Auditor found that the current fee structure fails to deter late payment and recommended increasing the late fee and requiring a reinstatement fee to provide an incentive for prompt payment.

The fees collected by the Department must be used for State and local public health programs and activities. Under G.S. 130A-248, no more than one-third of the fees collected may be used to support State health programs and activities. The remaining two-thirds is distributed to the counties to support local food sanitation inspection programs. The reinstatement fees collected would be subject to the one-third cap placed on State program expenditures, and two-thirds would be allocated to local health departments. The bill clarifies the purposes for which the money may be used to State and local food, lodging, and institution sanitation programs.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 469
SHORT TITLE: Permit Fees
SPONSOR(S): Finance Committee Substitute (Third Edition)

FISCAL IMPACT ESTIMATE

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUE	**$45,000 annual gain in revenue**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Environment, Health, and Natural Resources
Division of Environmental Health

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY:
The Department of Environment, Health, and Natural Resources permits food and lodging establishments that prepare food for human consumption and provides regulatory oversight and technical assistance to local health departments to ensure the sanitation of food and lodging establishments. Inspections of restaurants and other food handling establishments are performed by environmental health specialists employed by the counties.

In accordance with G.S. 130A-248 each food and lodging establishment in the state, providing food and drink to the public, pays an annual permit fee of $25.00. The fee is considered late if it is not paid within 45 days after billing by the Department, and the establishment is charged an additional $25.00 late fee. Under current law the Department has the right to suspend or revoke an establishment's permit if the establishment does not pay the permit fee and, if applicable, the late fee.

House Bill 469 eliminates the department's authority to revoke an establishment's permit and proposes a fee of $150.00 to reinstate an establishment's permit after the permit has been suspended. The department intends to use the additional revenue to recoup the cost of suspending permits, subject to G.S. 130A-248(d), which requires that no more than one third of

all fees collected from food and lodging establishments may be used to support state health programs and administrative costs. In addition, the bill proposes to narrow the use of the state's share of any fees collected to the food, lodging and institution sanitation program.

ASSUMPTIONS AND METHODOLOGY:

Revenues

The Department reports that 300 of the 23,000 permitees, in the State, have to be taken to court each year by the Department for operating without a permit. According to the Director of the Division of Environmental Health, approximately 300 permitees could be subject to the $150.00 reinstatement fee annually. The revenue potential from the reinstatement fee $45,000.

Expenditures

The State Auditor found in a performance audit of the Food Sanitation Inspection Program that the state's cost to suspend a permit for failure to pay the required permit fee and to initiate court action against an establishment operating with a suspended permit is approximately $866.00. For cases settled in court, the establishment is required only to pay the $25.00 permit fee and the $25.00 late fee plus court costs to have its permit reinstated. Because the state does not recover the $866.00 in this process, the State Auditor found the current fee structure fails to deter late payment and recommended increasing the late fee and requiring a reinstatement fee to provide an incentive for prompt payment.[1]

As written, the bill does not propose to change the allocation of fees collected for permits, late payment or the proposed reinstatement penalty. Although the bill establishes the reinstatement charge to help recover the costs associated with suspending permits, any fees collected will be subject to the one third cap placed on state program expenditures. The remaining two thirds of all fees collected from food and lodging establishments is distributed to county health departments to support local food sanitation inspection programs.

TECHNICAL CONSIDERATIONS:

Although the number of late paying permitees and the number of permitees taken to court has been relatively constant the past several years, the new reinstatement fee is intended to encourage establishments to pay the annual $25.00 permit fee on time to avoid the late payment charge, permit suspension and court action. The projected revenues assume the number of establishments required to pay the late fee and taken to court does not decline, and therefore reflect the maximum amount likely to be collected.

The department finds the same establishments fail to pay their permit fees on time each year and believes the reinstatement fee will encourage timely payment. Therefore, the department expects actual revenues to be lower than the maximum projected.

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[1] Office of the State Auditor, *Performance Audit of the Food Sanitation Inspection Program within the Department of Environment, Health, and Natural Resources,* pp. 20-21.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Warren Plonk & Mona Moon
APPROVED BY:
DATE: August 19, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1137
Committee Substitute Favorable 4/29/97
Committee Substitute #2 Favorable 5/21/97

Short Title: Soil and Water Conservation Plates. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE A SPECIAL LICENSE PLATE TO PROMOTE SOIL AND WATER CONSERVATION AND TO PROVIDE THAT A PORTION OF THE SALES REVENUE GOES TO FUND WATER QUALITY AND ENVIRONMENTAL EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(22a1) Soil and Water Conservation. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of water quality and environmental protection in North Carolina."

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00

Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
All Other Special Plates	$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
Soil and Water Conservation	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b5) Soil and Water Conservation Plates. -- The Division must receive 300 or more applications for a soil and water conservation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the soil and water conservation plates to the Soil and Water Conservation Account established in G.S. 143B-297.1."

Section 5. Part 7 of Article 7 of Chapter 143B is amended by adding a new section to read:

"**§ 143B-297.1. Soil and Water Conservation Account.**

The Soil and Water Conservation Account is established as a nonreverting account within the Department of Environment, Health, and Natural Resources. The Account consists of revenue credited to the Account from the sale of soil and water conservation special license plates. The Commission shall use the revenue from the account to fund environmental education and water quality education in North Carolina."

Section 6. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 1137:
Soil and Water Conservation Plates (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: August 19, 1997
SPONSOR: Representative Culp

House Bill 1137 would authorize the Division of Motor Vehicles to develop a Soil and Water Conservation special registration plate. The Division would have to receive at least 300 applications for the plate before it could be issued. The cost of the plate would be the regular registration fee plus an additional $20. The first $10 of the additional fee would be credited to the Special Registration Plate Fund. The remaining $10 of the additional fee would be credited to the Collegiate and Cultural Attraction Plate Account and transferred quarterly to the Soil and Water Conservation Account.

The bill establishes a Soil and Water Conservation Account as a nonreverting account within the Department of Environment, Health, and Natural Resources. The Soil and Water Conservation Commission must use the revenue in the account to fund environmental education and water quality education in North Carolina. The Soil and Water Conservation Commission is composed of seven members appointed by the Governor. It is responsible for approving petitions for soil conservation districts and applications for watershed plans.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1137 (Third Edition)

SHORT TITLE: Soil and Water Conservation Plates

SPONSOR(S): Representative Culp

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
Highway Fund - Special Registration Plate Acct.	$3,000	$3,000	$3,000	$3,000	$3,000
Collegiate and Cultural Attraction Plate Acct.	$3,000	$3,000	$3,000	$3,000	$3,000
EXPENDITURES					
Highway Fund - Special Registration Plate Acct.	$835	-	-	-	-

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation - Division of Motor Vehicles, Department of Environment, Health and Natural Resources

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: The bill authorizes the Division of Motor Vehicles (DMV) to issue a special registration plate to those interested in soil and water conservation if at least 300 applications for such plate are received.

ASSUMPTIONS AND METHODOLOGY:
This fiscal note assumes the issuance of the minimum 300 license plates in FY 1997-98 and renewal of those plates in the following years. There is a one-time cost of $100 to design the new plate and a one-time production cost of $2.45 per plate. For 300 plates, the total production cost of $835 is paid from the Special Registration Plate Account. In addition to the normal $20

registration fee every license holder pays, there is an additional $20 annual fee for each Soil and Water Conservation plate. $10 of the fee will be deposited into the Collegiate and Cultural Attractions Plate Account to be transferred quarterly to the Soil and Water Conservation Account established as a nonreverting account in the Department of Environment, Health and Natural Resources. The other $10 will go into the Special Registration Plate Account. It is assumed that all persons applying for the Soil and Water Conservation plate currently have a regular plate that will be turned in to DMV upon receipt of the new plate.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington
DATE: August 19, 1997

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1137

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1137-ARB-8/20 Page 1 of __

Date_____,1997

Comm. Sub. [yes]
Amends Title []
Third Edition

Senator_____

moves to amend the bill on page 1, lines 7 and 8, by rewriting the lines to read:

"Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision, to be inserted by the Revisor of Statutes in the appropriate alphabetical place, to read:";

and on page 1, line 9, by deleting "(22a1)" and substituting "( )".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1137
Committee Substitute Favorable 4/29/97
Committee Substitute #2 Favorable 5/21/97
Proposed Senate Committee Substitute H1137-PCS6320

Short Title: Soil and Water Conservation Plates. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE A SPECIAL LICENSE PLATE TO PROMOTE SOIL AND WATER CONSERVATION AND TO PROVIDE THAT A PORTION OF THE SALES REVENUE GOES TO FUND WATER QUALITY AND ENVIRONMENTAL EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision, to be inserted by the Revisor of Statutes in the appropriate alphabetical place, to read:

"( ) Soil and Water Conservation. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of water quality and environmental protection in North Carolina."

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00

Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
All Other Special Plates	$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
Soil and Water Conservation	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b5) Soil and Water Conservation Plates. -- The Division must receive 300 or more applications for a soil and water conservation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the soil and water conservation plates to the Soil and Water Conservation Account established in G.S. 143B-297.1."

Section 5. Part 7 of Article 7 of Chapter 143B is amended by adding a new section to read:

"**§ 143B-297.1. Soil and Water Conservation Account.**

The Soil and Water Conservation Account is established as a nonreverting account within the Department of Environment, Health, and Natural Resources. The Account consists of revenue credited to the Account from the sale of soil and water conservation special license plates. The Commission shall use the revenue from the account to fund environmental education and water quality education in North Carolina."

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 115*
Committee Substitute Favorable 4/14/97
Senate Judiciary Committee Substitute Adopted 8/19/97

Short Title: 1997 Technical Corrections. (Public)

Sponsors:

Referred to: Finance.

February 12, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-650(b1) reads as rewritten:

"(b1) At the dispositional hearing or a subsequent hearing in the case of a juvenile who has been adjudicated delinquent, undisciplined, abused, neglected, or dependent, if the court finds that it is in the best interest of the juvenile for the parent to be directly involved in the juvenile's treatment, the court may order the parent to participate in medical, psychiatric, psychological, or other treatment of the ~~juvenile~~ juvenile. The cost of the treatment shall be paid pursuant to G.S. 7A-647(3)a."

Section 2. G.S. 14-277(a) reads as rewritten:

"(a) No person shall falsely represent to another that he is a sworn law-enforcement officer. As used in this section, a person represents that he is a sworn law-enforcement officer if he:

(1) Verbally informs another that he is a sworn law-enforcement officer, whether or not the representation refers to a particular agency;

(2) Displays any badge or identification signifying to a reasonable individual that the person is a sworn law-enforcement officer, whether or not the badge or other identification refers to a particular law-enforcement agency; ~~or~~

(3) Unlawfully operates a vehicle on a public street, highway or public vehicular area with an operating red light as defined in G.S. ~~20-130.1(a).~~ 20-130.1(a); or

(4) Unlawfully operates a vehicle on a public street, highway, or public vehicular area with an operating blue light as defined in G.S. 20-130.1(c)."

Section 3. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. --

(1) Offense in Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.

(2) Offense Out of Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), ~~G.S. 14-33(b)(1), or G.S. 14-33(b)(2)~~ 14-33(c)(1), or 14-33(c)(2) when the offense was committed by a person who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.

(3) Repealed by Session Laws 1991, c. 150."

Section 4. G.S. 25-9-105(1)(h), as amended by Section 3 of S.L. 1997-181, reads as rewritten:

"(h) 'Goods' includes all things which are movable at the time the security interest attaches or which are fixtures (G.S. 25-9-313), but does not include money, documents, instruments, investment property, ~~commodity contracts,~~ accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;".

Section 5. G.S. 25-9-312(7), as amended by Section 16 of S.L. 1997-181, reads as rewritten:

"(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under G.S. 25-9-115 or G.S. 25-9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) or G.S. 25-9-115(5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Section 6. G.S. 25-9-303(1) reads as rewritten:

"(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in G.S. 25-9-115, 25-9-302, 25-9-304, 25-9-305 and 25-9-306. If such steps are taken before the security interest attaches, it is perfected at the time it attaches."

Section 7. G.S. 28A-18-2(a) reads as rewritten:

"(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' ~~fees.~~ fees, but shall be disposed of as provided in the Intestate Succession Act. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term ~~time, but shall be disposed of as provided in the Intestate Succession Act.~~ time."

Section 8. G.S. 41-19(a) reads as rewritten:

"(a) Except as extended by subsection (b) of this section, this Article applies to a nonvested property interest or a power of appointment that is created on or after October 1, 1995. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created

when the power is irrevocably exercised or when a revocable exercise becomes irrevocable."

Section 9. G.S. 68-42 reads as rewritten:

"§ 68-42. Stock running at large prohibited; certain ponies excepted.

From and after July 1, 1958, it shall be unlawful for any person, firm or corporation to allow his or its horses, cattle, goats, sheep, or hogs to run free or at large along the outer banks of this State. This Article shall not apply to horses known as marsh ponies or banks ponies on Ocracoke Island, Hyde County. This Article shall not apply to horses known as marsh ponies or banks ponies on ~~Shackelford~~ Shackleford Banks between Beaufort Inlet and Barden's Inlet in Carteret County. Saving and excepting those animals known as 'banker ponies' on the island of Ocracoke owned by the Boy Scouts and not exceeding 35 in number."

Section 10. G.S. 68-43 reads as rewritten:

"§ 68-43. Authority of Secretary of Environment, Health, and Natural Resources to remove or confine ponies on Ocracoke Island and ~~Shackelford~~ Shackleford Banks.

Notwithstanding any other provisions of this Article, the Secretary of Environment, Health, and Natural Resources shall have authority to remove or cause to be removed from Ocracoke Island and ~~Shackelford~~ Shackleford Banks all ponies known as banks ponies or marsh ponies if and when he determines that such action is essential to prevent damage to the island. In the event such a determination is made, the Secretary, in lieu of removing all ponies, may require that they be restricted to a certain area or corralled so as to prevent damage to the island. In the event such action is taken, the Secretary is authorized to take such steps and act through his duly designated employees or such other persons as, in his opinion, he deems necessary and he may accept any assistance provided by or through the National Park Service."

Section 11. G.S. 81A-26(a)(4) reads as rewritten:

"(4) The identity of the commodity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale,".

Section 12. G.S. 90-89(c)15. reads as rewritten:

"15. ~~Psilocyn.~~ Psilocin."

Section 14. G.S. 106-727(b) reads as rewritten:

"(b) The Commission shall consist of nine members, as follows:

(1) The Commissioner of Agriculture;

(2) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore ~~of~~ of the Senate in accordance with G.S. 120-121, one of whom shall be designated to serve as chairman as provided in subsection (d) of this section; and

(3) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121."

Section 15. G.S. 106-802(4) reads as rewritten:

"(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste

Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~".

Section 16. G.S. 115C-81.2(e) reads as rewritten:

"(e) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by December 31, 1996, and annually thereafter on the comprehensive plan developed under ~~Section 1 of Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 1.~~ subsection (a) of this section. The first report shall include revisions made to the standard course of study, teacher certification standards, and teacher education programs. Subsequent reports shall address the effectiveness, based on factors including improved student performance in reading, of the implementation of the plan. The State Board may make recommendations to the General Assembly in any of its reports."

Section 17. G.S. 115C-302(f) reads as rewritten:

"(f) A teacher may use annual leave, personal leave, or leave without pay to care for a newborn child or for a child placed with the teacher for adoption or foster care. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless ~~the~~ the teacher and local board of education agree otherwise."

Section 18. G.S. 115D-2.1(b)(3) reads as rewritten:

"(3) The Governor shall appoint to the State Board four members from the State at large and one member from each of the six Trustee Association Regions defined in ~~G.S. 115D-63~~ G.S. 115D-62. The initial appointments by the Governor shall be made effective July 1, 1980, or as soon as feasible thereafter. In order to establish regularly overlapping terms, the initial appointments by the Governor shall be made so that three expire June 30, 1981, three expire June 30, 1983, and four expire June 30, 1985. Each subsequent regular appointment by the Governor shall be for a term of six years and until a successor is appointed and qualifies. Any vacancy occurring among his appointees before the expiration of term shall be filled by appointment of the Governor; the member so appointed shall meet the same residential qualification, if any, as the member whom he succeeds and shall serve for the remainder of the unexpired term of that member."

Section 19. G.S. 115D-2.1(d) reads as rewritten:

"(d) No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction of the State Board and no spouse of any of those persons, shall be eligible to serve on the State Board. Furthermore, no person who within the prior ~~5~~ five years has been an employee of

the Department of Community Colleges shall be eligible to serve on the State Board."

Section 20. G.S. 131D-2(a1)(4) reads as rewritten:

"(4) Individuals whose health needs cannot be met in the specific adult care home as determined by the ~~residence,~~ residence; and".

Section 21. G.S. 131D-20(6) reads as rewritten:

"(6) 'Group home for developmentally disabled adults' means ~~and~~ an adult care home which has two to nine developmentally disabled adult residents."

Section 22. G.S. 143B-153(3)b. reads as rewritten:

"b. For the inspection and licensing of adult care homes for aged or disabled persons as provided by G.S. 131D-2(b) and for personnel requirements of staff employed in ~~adult care homes~~ adult care homes;".

Section 23. G.S. 148-32.1(b) reads as rewritten:

"(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred prisoner, if the prison population has exceeded a manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility."

Section 24. G.S. 153A-301(a) reads as rewritten:

"(a) The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Beach erosion control and flood and hurricane protection works.

(2) Fire protection.

(3) Recreation.
(4) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(5) Solid waste collection and disposal systems.
(6) Water supply and distribution systems.
(7) Ambulance and rescue.
(8) Watershed improvement projects, including but not limited to watershed improvement projects as defined in ~~General Statutes Chapter 139;~~ Chapter 139 of the General Statutes; drainage projects, including but not limited to the drainage projects provided for by ~~General Statutes Chapter 156;~~ Chapter 156 of the General Statutes; and water resources development projects, including but not limited to the federal water resources development projects provided for by ~~General Statutes Chapter 143, Article 21.~~ Article 21 of Chapter 143 of the General Statutes.
(9) Cemeteries.
(10) Law enforcement if all of the following apply:
a. The population of the county is over ~~five hundred thousand~~ 500,000 according to the most recent federal decennial census.
b. The county has an interlocal agreement with a city in the county under which the city provides law enforcement services in the entire unincorporated area of the county.
c. The county will pay to the city the following percentages of the city-county police department budget if there are no significant changes to the city's statutory annexation authority:
1. 9.60% for fiscal years 1995-96 and 1996-97.
2. 7.60% for fiscal years 1997-98 and 1998-99.
3. 5.60% for fiscal years 1999-2000 and 2000-2001.
4. 3.60% for fiscal years 2001-02 and 2002-03.
5. 1.60% for fiscal years 2003-04 and 2004-05.

Provided, if the difference between the ratio of the population in the unincorporated area to the total population served by the city-county police department and the rate for the current year as stated above is greater than fifteen percent (15%), ~~the~~ the county's agreement to pay such percentages can be amended to reflect that difference."

Section 25. Chapter 261 of the 1995 Session Laws is repealed.

Section 26. Section 2 of Chapter 627 of the 1995 Session Laws reads as rewritten:

"Sec. 2. G.S. ~~113-133(e)~~ 113-133.1(e) is amended by deleting the words 'Currituck: Session Laws 1959, Chapter 545.'"

Section 27. The Revisor of Statutes is authorized to renumber or reletter those sections and any parts of sections of the General Statutes that have been published in the General Statutes of North Carolina prior to the 1997 Session of the 1997 General Assembly and have a number or letter designation that is not compatible with the General Assembly's computer program database to be implemented in 1997 or 1998. This authority is in addition to the authority contained in G.S. 164-10.

Section 28. Effective January 1, 1998, G.S. 1-339.25(a), as amended by Section 18 of S.L. 1997-83 and Section 1 of S.L. 1997-119, reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). ~~the the the~~ An upset bid shall be made by delivering to the clerk of superior court, with whom the report of the sale was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale was filed, by the close of normal business hours on the tenth day after the filing of the report of sale, and if the tenth day shall fall upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when ~~said~~ the office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b) of this section."

Section 29. G.S. 20-4.01(27)d1. reads as rewritten:

"d1. Moped. -- ~~Vehicles having~~ A vehicle that has two or three ~~wheels and operable pedals and equipped with~~ wheels, no external shifting device, and a motor ~~which~~ that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface."

Section 30. G.S. 20-28.2(a), as amended by Section 1.1 of S.L. 1997-379, reads as rewritten:

"(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or 20-17.2; or

(2) G.S. 20-16(a)(7), ~~20-17(1), or 20-17(9),~~ 20-17(a)(1), or 20-17(a)(9), if the offense involves impaired driving."

Section 31. G.S. 20-28.3(a), as enacted by Section 1.2 of S.L. 1997-379, reads as rewritten:

"(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired ~~drivers~~ driving license ~~revocation. The revocation of a person's drivers license is an impaired drivers license revocation for purposes of this section if the revocation is pursuant to:~~

~~(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or 20-17.2; or~~

~~(2) G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved impaired driving.~~ revocation as defined in G.S. 20-28.2(a)."

Section 32. Effective December 1, 1997, G.S. 20-7(a1), as amended by Section 8 of S.L. 1997-16, reads as rewritten:

"(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person ~~must have~~ shall have:

(1) ~~a motorcycle learner's permit, a~~ A full provisional license with a motorcycle learner's permit; ~~and a motorcycle endorsement, or a~~

(2) A regular drivers license with a motorcycle learner's permit; or

(3) Either:

a. A full provisional license; or

b. A regular drivers license, ~~and~~ with a motorcycle endorsement.

Subsection (a2) of this section sets forth the requirements for a motorcycle learner's permit.

To obtain a motorcycle endorsement, a person ~~must~~ shall demonstrate competence to drive a motorcycle ~~by~~ by:

(1) ~~passing~~ Passing a road ~~test and~~ test;

(2) Passing a written or oral test concerning ~~a motorcycle~~ motorcycles; and

(3) ~~must pay~~ Paying the fee for a motorcycle endorsement.

Neither a drivers license nor a motorcycle endorsement is required to drive a moped."

Section 33. Effective December 1, 1997, G.S. 20-7(a2), as enacted by Section 9 of S.L. 1997-16, reads as rewritten:

"(a2) Motorcycle Learner's Permit. -- The following persons are eligible for a motorcycle learner's permit:

(1) A person who is at least 16 years old but less than 18 years old and has ~~a limited provisional license or~~ a full provisional license issued by the Division.

(2) A person who is at least 18 years old and has a license issued by the Division.

To obtain a motorcycle learner's permit, an applicant ~~must~~ shall pass a vision test, a road sign test, and a written test specified by the Division. A motorcycle learner's

permit expires 18 months after it is issued. The holder of a motorcycle learner's permit may not drive a motorcycle with a passenger. ~~The holder of a motorcycle learner's permit who has a limited provisional license may drive the motorcycle only at a time when the license holder could drive a motor vehicle without supervision under G.S. 20-11.~~ The fee for a motorcycle learner's permit is the amount set in G.S. 20-7(l) for a learner's permit."

Section 34. (a) G.S. 20-28.6, as enacted in Section 1.5 of S.L. 1997-379, reads as rewritten:

"§ 20-28.6. Forfeiture of right of registration.

(a) A person convicted of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 forfeits the right to register or have registered a motor vehicle in the person's name until the person's drivers license is restored. The trial judge at the sentencing hearing on the person's charge of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 shall order the defendant's rights of registration forfeited for the period the defendant's drivers license is revoked. The defendant shall be ordered to surrender the registration on all motor vehicles registered in the defendant's name to the Division within 10 days of the date of the order. Information in the order pertaining to the registration of motor vehicles shall be transmitted electronically or otherwise by the clerk of superior court to the Division. The Division shall not thereafter register a motor vehicle in the defendant's name until the defendant's drivers license has been restored.

(b) A registered owner other than the operator of the vehicle that is seized pursuant to G.S. 20-28.3 who is not an innocent party pursuant to G.S. 20-28.2 forfeits the right to register or have registered in the person's name the motor vehicle seized, until the drivers license of the person whose driving violation resulted in the motor vehicle being seized is restored. The trial judge on the person's charge of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 shall order the registered owner's rights of registration for the seized motor vehicle forfeited for the period the defendant's drivers license is revoked after an opportunity for a hearing and a determination that the requirements of subsections (a) through (c) of G.S. 20-28.2 exist. The registered owner shall be ordered to surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the order. Information in the order pertaining to the registration of motor vehicles shall be transmitted electronically or otherwise by the clerk of superior court to the Division. The Division shall not thereafter register the motor vehicle seized in the registered owner's name until the defendant's drivers license has been restored."

(b) G.S. 20-139.1(b5), as enacted in Section 5.4 of S.L. 1997-379, reads as rewritten:

"(b5) Subsequent Tests Allowed. -- A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily

fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of the charging officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

Section 35. G.S. 20-183.8C(b), as amended by Section 7 of S.L. 1997-29, reads as rewritten:

"(b) Type II. -- It is a Type II violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Use the identification code of another to gain access to an emissions analyzer.

(2) Keep inspection stickers and other compliance documents in a manner that makes them easily accessible to individuals who are not inspection mechanics.

(3) Put an emissions inspection sticker on a vehicle that is required to have one of the following emissions control devices but does not have it:

a. Catalytic converter.
b. PCV valve.
c. Thermostatic air control.
d. Oxygen sensor.
e. Unleaded gas restrictor.
f. Gasoline tank cap.
g. Air injection system.
h. Evaporative emissions system.
i. Exhaust gas recirculation (EGR) valve.

(4) Put an emissions inspection sticker on a vehicle without performing a visual inspection of the vehicle's exhaust system and checking the exhaust system for leaks.

(5) Impose no fee for an emissions inspection of a vehicle or the issuance of an emissions inspection sticker or impose a fee for one of these actions in an amount that differs from the amount set in ~~G.S. 20-187.3.~~ G.S. 20-183.7."

Section 36. G.S. 20-376(1) reads as rewritten:

"(1) Federal safety regulations. -- The federal motor carrier safety regulations contained in 49 ~~U.S.C. Subchapter B, Parts 350 through 399.~~ C.F.R. Parts 382 and 390 through 398."

Section 37. G.S. 20-381(1a) reads as rewritten:

"(1a) To set safety standards for vehicles of motor carriers engaged in foreign, interstate, or intrastate commerce over the highways of this State and for the safe operation of these vehicles. The Division may ~~stop and inspect a vehicle~~ stop, enter upon, and perform

inspections of motor carriers' vehicles in operation to determine ~~if it is in~~ compliance with these standards and may conduct any investigations and tests it finds necessary to promote the safety of equipment and the safe operation on the highway of these vehicles."

Section 38. G.S. 20-381(3) reads as rewritten:

"(3) To relieve the highways of all undue burdens and safeguard traffic thereon by adopting and enforcing rules and orders designed and calculated to minimize the dangers attending transportation on the highways of all hazardous ~~materials.~~ materials and other commodities."

Section 39. Effective June 27, 1997, G.S. 53-212.1, as amended by Section 2.1 of S.L. 1997-241, reads as rewritten:

"**§ 53-212.1. Bank agent for deposit institution affiliate.**

A bank may act as the agent of any depository institution affiliate in receiving deposits, renewing time deposits, closing loans, servicing loans, and receiving payments on loans and other obligations, without being deemed a branch of such affiliate, in accordance with Section 101(d) of the Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994. An affiliate for the purposes of this section shall include (i) an affiliate as defined in Section 2(k) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841(k)), and (ii) an affiliate as defined in Section 23A(b)(1) of the Federal Reserve Act, as amended ~~(12 U.S.C. § 37c(b)(1)) (but~~ (12 U.S.C. § 371c(b)(1)), but without regard to whether the bank or the affiliate is a member of the Federal Reserve ~~System).~~ System."

Section 40. (a) The catch line for G.S. 58-51-61, as enacted in Section 1 of S.L. 1997-312, reads as rewritten:

"**~~§58-51-61.~~ § 58-51-62. Coverage for reconstructive breast surgery resulting from mastectomy.**"

(b) G.S. 58-50-155(a2), as enacted in Section 4 of S.L. 1997-312, reads as rewritten:

"(a2) Notwithstanding G.S. 58-50-123(c), the standard health plan developed and approved under G.S. 58-50-125 shall provide coverage for reconstructive breast surgery resulting from a mastectomy at least equal to the coverage required by ~~G.S. 58-51-61.~~ G.S. 58-51-62."

(c) Subsection (a) of this section is effective retroactively to July 10, 1997. Subsection (b) of this section becomes effective January 1, 1998.

Section 41. If Senate Bill 843 of the 1997 General Assembly becomes law, G.S. 58-31-45 reads as rewritten:

"**§ 58-31-45. Report required of Commissioner.**

The Commissioner must submit to the Governor a full report of his official action under this Article, with such recommendations as commend themselves to ~~him, and it shall be embodied in or attached to his biennial report to the General Assembly.~~ him."

Section 42. G.S. 58-68-45(b)(3), as enacted by S.L. 97-259, reads as rewritten:

"(3) Violation of participation or contribution rules. -- The policyholder has failed to comply with a material plan provision relating to employer contribution or group participation rules, as permitted under ~~G.S. 58-68-40(e)~~ G.S. 58-68-40(d) in the case of the small group market or pursuant to this Chapter in the case of the large group market."

Section 43. (a) G.S. 105-305(b), (d), and (e) are repealed.

(b) This section becomes effective July 1, 1997.

Section 44. G.S. 113-291.3(b)(8), as enacted by Section 15 of S.L. 1997-142, reads as rewritten:

"(8) The ~~sale of the~~ edible parts of deer raised domestically in another state may be transported into this State and resold as a meat product for human consumption when the edible parts have passed inspection in the other state by that state's inspection agency or the United States Department of Agriculture."

Section 45. G.S. 120-34(a) reads as rewritten:

"(a) The Legislative Services Commission shall publish all laws and joint resolutions passed at each session of the General Assembly. The laws and joint resolutions shall be kept separate and indexed separately. Each volume shall contain a certificate from the Secretary of State stating that the volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the Office of the Secretary of State. The Commission may publish the Session Laws and House and Senate Journals of extra and special sessions of the General Assembly in the same volume or volumes as those of regular sessions of the General Assembly. In printing, the signatures of the presiding officers and the Governor shall be omitted.

The enrolling clerk or the Legislative Services Office shall assign to each bill that becomes law a number in the order the bill became law, and the laws shall be printed in the Session Laws in that order. The number shall be preceded by the ~~letters 'S.L.'~~ phrase 'Session Law' or the letters 'S.L.' followed by the calendar year it was ordered enrolled, followed by a hyphen and the sequential law number. Laws of Extra Sessions shall so indicate. In the case of any bill required to be presented to the Governor, and which became law, the Session Laws shall carry, below the date of ratification, editorial notes as to what time and what date the bill became law. In any case where the Governor has returned a bill to the General Assembly with objections, those objections shall be printed verbatim in the Session Laws, regardless of whether or not the bill became law notwithstanding the objections."

Section 46. (a) G.S. 120-70.80 reads as rewritten:

"**§ 120-70.80. Creation and membership of Joint Legislative Education Oversight Committee.**

The Joint Legislative Education Oversight Committee is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1991 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

(b) G.S. 120-70.82(a) reads as rewritten:

"(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Education Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs."

Section 47. G.S. 122C-261(d) reads as rewritten:

"(d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. ~~If a physician or eligible psychologist recommends outpatient commitment, the clerk or magistrate~~ The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252. However, if the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266."

Section 48. G.S. 130A-412.1(g), as enacted by Section 2 of S.L. 1997-192, reads as rewritten:

"(g) Hospitals and hospital personnel shall not be subject to civil or criminal liability nor to discipline for unprofessional conduct for actions taken in good faith to comply with this section. This subsection shall not provide immunity from ~~a~~ civil liability arising from gross negligence."

Section 49. (a) G.S. 131E-146(1) reads as rewritten:

"(1) 'Ambulatory surgical facility' means a facility designed for the provision of ~~an ambulatory surgical program.~~ a specialty ambulatory surgical program or a multispecialty ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least ~~one~~ two designated operating ~~room~~ rooms and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1a) and which are performed in a physician or dentist's office does not make that office an ambulatory surgical facility."

(b) This section conforms the definition of the term "ambulatory surgical facility" in the Ambulatory Surgical Facility Licensure Act to the definition of the same term in G.S. 131E-176, to reflect the amendment made to that statute by Section 2 of Chapter 7 of the 1993 Session Laws. However, ambulatory surgical facilities with only one operating room developed prior to the effective date of Chapter 7 of the 1993 Session Laws may still be licensed as if this section had not been enacted.

Section 50. Effective October 1, 1997, G.S. 143-215.84(e), as enacted by Section 4 of S.L. 1997-394, reads as rewritten:

"~~(e)~~ (f) In order to reduce or eliminate the danger to public health or the environment posed by a discharge or release of oil or a hazardous substance, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site if the restrictions meet the requirements of this subsection. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial

action plan in accordance with standards determined: (i) pursuant to rules for remediation of soil or groundwater contamination adopted by the Commission; (ii) with respect to the cleanup of a discharge or release from a petroleum underground storage tank, pursuant to rules adopted by the Commission pursuant to G.S. 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the oil or hazardous substance discharge site. Any land-use restriction may also be enforced by the Department through the remedies provided in this Article, Part 2 of Article 1 of Chapter 130A of the General Statutes, or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the site. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction."

Section 51. Section 8 of Chapter 1436 of the 1957 Session Laws, as rewritten by Section 6 of Chapter 622 of the 1981 Session Laws and by Section 1 of S.L. 1997-163, reads as rewritten:

"Sec. 8. To obtain a license for either a stationary bush blind or a floating bush blind, the applicant shall apply in writing to the clerk to the Game Commission enclosing:

(1) Twenty-five dollars ($25.00) if the applicant is a resident of North Carolina; or

(2) Two hundred fifty dollars ($250.00) if the applicant is not a resident of North Carolina.

In addition to ~~the~~ this nonrefundable application fee, each application shall be accompanied by a nonrefundable processing fee of ten dollars ($10.00). Applicants shall submit proof of North Carolina residency along with each application.

Applicants who are not residents of North Carolina but who were the holders of licensed blinds for the 1996-97 waterfowl season shall be charged as North Carolina residents for all subsequent renewals of that application. However, this exemption terminates if the blind license is not renewed during any subsequent annual renewal period and is not transferable to any different blind location.

Float blinds when licensed shall bear the license number or tag, and the same shall be displayed in a prominent or conspicuous place upon the blind."

Section 52. Section 1 of S.L. 1997-11 reads as rewritten:

"Section 1. That part of Section 1 of Chapter ~~6~~ 7 of the Session Laws of the 1991 Extra Session which rewrote G.S. 163-201(a) is repealed."

Section 53. Section 1 of S.L. 1997-97 reads as rewritten:

"Section 1. ~~Subsection (f) of Chapter 33 of the 1993 Session Laws~~ G.S. 113-291.9(g) is repealed."

Section 54. The prefatory language of Section 1 of S.L. 1997-172 reads as rewritten:

"Section 1. The title of Article 5 of Chapter ~~30~~ 130A of the General Statutes reads as rewritten:".

Section 55. Section 7(a) of S.L. 1997-221 is amended by adding quotation marks at the end.

Section 56. Unless otherwise provided, this act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 115 (PSCS):
1997 Technical Corrections

TO: Senate Finance Committee
FROM: Committee Counsel
DATE: August 20, 1997
SPONSOR:

House Bill 115 makes corrections of a technical nature to various sections of the General Statutes. The amendments recommended by the General Statutes Commission are in Sections 1 through 27 of the bill. These amendments correct spelling, typographical, grammatical, redlining, and other obvious drafting errors, make technical conforming changes, update or correct statutory references, and authorize the Revisor of Statutes to renumber sections or parts of sections if needed by the General Assembly's new computer programs. Section 13 of the bill has been deleted because the section it was amending has been repealed. The repeal and deletion have occurred since the General Statues summary was prepared. The changes beginning with Section 28 have been identified by legislative and agency staff, many of which are correcting errors or duplicative section numbers in laws adopted during the 1997 Session.

The bill is before Senate Finance because of the recommendations in Sections 43 and 51. This bill also adds more recommendations to correct technical errors in Senate Bill 929.

Section 43 of the bill repeals various subsections of G.S. 105-305. This statute describes the place for listing intangible personal property for property tax purposes. Since House Bill 295, which was ratified April 30th, exempted most intangible personal property from property taxes other than leasehold interests in exempted real property, the following subsections of G.S. 105-305 need to be repealed:

- Subsection (b) which sets out the general rule for determining the residence of the owner as the tax situs for intangible personal property.
- Subsection (d) which refers to intangible personal property of a decedent whose estate is in administration.
- Subsection (e) which refers to intangible personal property held by a trustee, guardian or other fiduciary.

The subsections in G.S. 105-305, setting out listing instructions and the taxation of intangible personal property representing an interest in real property, are not repealed.

Section 51 of the bill makes a technical correction to House Bill 411, ratified on June 9th. HB 411 revised the laws relating to the Game Commission of Currituck County. The technical correction clarifies that the application fee for a bush blind is nonrefundable The ratified bill only referred to the processing fee as nonrefundable

The proposed committee substitute for House Bill 115 adds section 43.1 to make a technical correction to Senate Bill 929 (AN ACT TO ENHANCE AND IMPROVE CHILD CARE IN NORTH CAROLINA). This section clarifies that child care centers (now facilities) may use domestic kitchen equipment, provided appropriate temperature levels for heating, cooling, and storing are maintained. A child care center is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care. A facility includes child care centers, family child care homes, and any other child care arrangement that provides child care. If the correction is not made there is some concern among local health departments that the provision could be construed to require inspections of family child care homes by the local health department. A family child care home is an arrangement located in a residence where, at any one time, more than two children but less than nine children receive child care.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 115

AMENDMENT NO._____
(to be filled in by Principal Clerk)

H115-ALB-10A

Date_____,1997

Comm. Sub. [YES]
Amends Title []
Third Edition

moves to amend the bill on page 13, line 10,
by adding the following between lines 10 and 11:
"Section 43.1. (a) If Senate Bill 929, 1997 Session becomes law, then G.S. 110-91(1) as rewritten by Section 8 of that act reads as rewritten:
'(1) Medical Care and Sanitation. -- The Commission for Health Services shall adopt rules which establish minimum sanitation standards for child care centers and their personnel. The sanitation rules adopted by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; infectious disease control; sleeping facilities; and other items and facilities as are necessary in the interest of the public health. The Commission for Health Services shall allow child care ~~facilities~~ centers to use domestic kitchen equipment, provided appropriate temperature levels for heating, cooling, and storing are maintained. Child care centers that fry foods shall use commercial

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 115

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H115-ALB-10A

hoods. These rules shall be developed in consultation with the Department.

The Commission shall adopt rules for child care facilities to establish minimum requirements for child and staff health assessments and medical care procedures. These rules shall be developed in consultation with the Department of Environment, Health, and Natural Resources. Each child shall have a health assessment before being admitted or within 30 days following admission to a child care facility. The assessment shall be done by: (i) a licensed physician, (ii) the physician's authorized agent who is currently approved by the North Carolina Medical Board, or comparable certifying board in any state contiguous to North Carolina, (iii) a certified nurse practitioner, or (iv) a public health nurse meeting the Department of Environment, Health, and Natural Resources' Standards for Early Periodic Screening, Diagnosis, and Treatment Program. However, no health assessment shall be required of any staff or child who is and has been in normal health when the staff, or the child's parent, guardian, or full-time custodian objects in writing to a health assessment on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 115

AMENDMENT NO. _____
(to be filled in by Principal Clerk)

H115-ALB-10A

Organizations that provide prepared meals to child care centers only are considered child care centers for purposes of compliance with appropriate sanitation standards.'"

(b) This section becomes effective at the same time as Section 8 of Senate Bill 929, 1997 Session becomes effective.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 115*
Committee Substitute Favorable 4/14/97
Senate Judiciary Committee Substitute Adopted 8/19/97
Proposed Senate Committee Substitute H115-PCS6319

Short Title: 1997 Technical Corrections. (Public)

Sponsors:

Referred to:

February 12, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-650(b1) reads as rewritten:

"(b1) At the dispositional hearing or a subsequent hearing in the case of a juvenile who has been adjudicated delinquent, undisciplined, abused, neglected, or dependent, if the court finds that it is in the best interest of the juvenile for the parent to be directly involved in the juvenile's treatment, the court may order the parent to participate in medical, psychiatric, psychological, or other treatment of the ~~juvenile~~ juvenile. The cost of the treatment shall be paid pursuant to G.S. 7A-647(3)a."

Section 2. G.S. 14-277(a) reads as rewritten:

"(a) No person shall falsely represent to another that he is a sworn law-enforcement officer. As used in this section, a person represents that he is a sworn law-enforcement officer if he:

(1) Verbally informs another that he is a sworn law-enforcement officer, whether or not the representation refers to a particular agency;
(2) Displays any badge or identification signifying to a reasonable individual that the person is a sworn law-enforcement officer, whether or not the badge or other identification refers to a particular law-enforcement agency; ~~or~~
(3) Unlawfully operates a vehicle on a public street, highway or public vehicular area with an operating red light as defined in G.S. ~~20-130.1(a).~~ 20-130.1(a); or
(4) Unlawfully operates a vehicle on a public street, highway, or public vehicular area with an operating blue light as defined in G.S. 20-130.1(c)."

Section 3. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. --
(1) Offense in Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.
(2) Offense Out of Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe:
a. Has committed a felony; or
b. Has committed a misdemeanor, and:
1. Will not be apprehended unless immediately arrested, or
2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or
c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or
d. Has committed a misdemeanor under G.S. 14-33(a), ~~G.S. 14-33(b)(1), or G.S. 14-33(b)(2)~~ 14-33(c)(1), or 14-33(c)(2) when the offense was committed by a person who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.
(3) Repealed by Session Laws 1991, c. 150."

Section 4. G.S. 25-9-105(1)(h), as amended by Section 3 of S.L. 1997-181, reads as rewritten:

"(h) 'Goods' includes all things which are movable at the time the security interest attaches or which are fixtures (G.S. 25-9-313), but does not include money, documents, instruments, investment property, ~~commodity contracts,~~ accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be

cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;".

Section 5. G.S. 25-9-312(7), as amended by Section 16 of S.L. 1997-181, reads as rewritten:

"(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under G.S. 25-9-115 or G.S. 25-9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) or G.S. 25-9-115(5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Section 6. G.S. 25-9-303(1) reads as rewritten:

"(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in G.S. 25-9-115, 25-9-302, 25-9-304, 25-9-305 and 25-9-306. If such steps are taken before the security interest attaches, it is perfected at the time it attaches."

Section 7. G.S. 28A-18-2(a) reads as rewritten:

"(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars ($4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' ~~fees.~~ fees, but shall be disposed of as provided in the Intestate Succession Act. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term ~~time, but shall be disposed of as provided in the Intestate Succession Act.~~ time."

Section 8. G.S. 41-19(a) reads as rewritten:

"(a) Except as extended by subsection (b) of this section, this Article applies to a nonvested property interest or a power of appointment that is created on or after

October 1, 1995. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable."

Section 9. G.S. 68-42 reads as rewritten:

"**§ 68-42. Stock running at large prohibited; certain ponies excepted.**

From and after July 1, 1958, it shall be unlawful for any person, firm or corporation to allow his or its horses, cattle, goats, sheep, or hogs to run free or at large along the outer banks of this State. This Article shall not apply to horses known as marsh ponies or banks ponies on Ocracoke Island, Hyde County. This Article shall not apply to horses known as marsh ponies or banks ponies on ~~Shackelford~~ Shackleford Banks between Beaufort Inlet and Barden's Inlet in Carteret County. Saving and excepting those animals known as 'banker ponies' on the island of Ocracoke owned by the Boy Scouts and not exceeding 35 in number."

Section 10. G.S. 68-43 reads as rewritten:

"**§ 68-43. Authority of Secretary of Environment, Health, and Natural Resources to remove or confine ponies on Ocracoke Island and ~~Shackelford~~ Shackleford Banks.**

Notwithstanding any other provisions of this Article, the Secretary of Environment, Health, and Natural Resources shall have authority to remove or cause to be removed from Ocracoke Island and ~~Shackelford~~ Shackleford Banks all ponies known as banks ponies or marsh ponies if and when he determines that such action is essential to prevent damage to the island. In the event such a determination is made, the Secretary, in lieu of removing all ponies, may require that they be restricted to a certain area or corralled so as to prevent damage to the island. In the event such action is taken, the Secretary is authorized to take such steps and act through his duly designated employees or such other persons as, in his opinion, he deems necessary and he may accept any assistance provided by or through the National Park Service."

Section 11. G.S. 81A-26(a)(4) reads as rewritten:

"(4) The identity of the commodity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale,".

Section 12. G.S. 90-89(c)15. reads as rewritten:

"15. ~~Psilocyn.~~ Psilocin."

Section 14. G.S. 106-727(b) reads as rewritten:

"(b) The Commission shall consist of nine members, as follows:

(1) The Commissioner of Agriculture;

(2) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore ~~of~~ of the Senate in accordance with G.S. 120-121, one of whom shall be designated to serve as chairman as provided in subsection (d) of this section; and

(3) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121."

Section 15. G.S. 106-802(4) reads as rewritten:

"(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~".

Section 16. G.S. 115C-81.2(e) reads as rewritten:

"(e) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by December 31, 1996, and annually thereafter on the comprehensive plan developed under ~~Section 1 of Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 1.~~ subsection (a) of this section. The first report shall include revisions made to the standard course of study, teacher certification standards, and teacher education programs. Subsequent reports shall address the effectiveness, based on factors including improved student performance in reading, of the implementation of the plan. The State Board may make recommendations to the General Assembly in any of its reports."

Section 17. G.S. 115C-302(f) reads as rewritten:

"(f) A teacher may use annual leave, personal leave, or leave without pay to care for a newborn child or for a child placed with the teacher for adoption or foster care. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless ~~the~~ the teacher and local board of education agree otherwise."

Section 18. G.S. 115D-2.1(b)(3) reads as rewritten:

"(3) The Governor shall appoint to the State Board four members from the State at large and one member from each of the six Trustee Association Regions defined in ~~G.S. 115D-63~~ G.S. 115D-62. The initial appointments by the Governor shall be made effective July 1, 1980, or as soon as feasible thereafter. In order to establish regularly overlapping terms, the initial appointments by the Governor shall be made so that three expire June 30, 1981, three expire June 30, 1983, and four expire June 30, 1985. Each subsequent regular appointment by the Governor shall be for a term of six years and until a successor is appointed and qualifies. Any vacancy occurring among his appointees before the expiration of term shall be filled by appointment of the Governor; the member so appointed shall meet the same residential qualification, if any, as the member whom he succeeds and shall serve for the remainder of the unexpired term of that member."

Section 19. G.S. 115D-2.1(d) reads as rewritten:

"(d) No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction of the State Board and no spouse of any of those persons, shall be eligible to serve on the State Board.

Furthermore, no person who within the prior ~~5~~ five years has been an employee of the Department of Community Colleges shall be eligible to serve on the State Board."

Section 20. G.S. 131D-2(a1)(4) reads as rewritten:

"(4) Individuals whose health needs cannot be met in the specific adult care home as determined by the ~~residence,~~ residence; and".

Section 21. G.S. 131D-20(6) reads as rewritten:

"(6) 'Group home for developmentally disabled adults' means ~~and~~ an adult care home which has two to nine developmentally disabled adult residents."

Section 22. G.S. 143B-153(3)b. reads as rewritten:

"b. For the inspection and licensing of adult care homes for aged or disabled persons as provided by G.S. 131D-2(b) and for personnel requirements of staff employed in ~~adult care homes~~ adult care homes;".

Section 23. G.S. 148-32.1(b) reads as rewritten:

"(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred prisoner, if the prison population has exceeded a manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility."

Section 24. G.S. 153A-301(a) reads as rewritten:

"(a) The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Beach erosion control and flood and hurricane protection works.

(2) Fire protection.
(3) Recreation.
(4) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(5) Solid waste collection and disposal systems.
(6) Water supply and distribution systems.
(7) Ambulance and rescue.
(8) Watershed improvement projects, including but not limited to watershed improvement projects as defined in ~~General Statutes Chapter 139;~~ Chapter 139 of the General Statutes; drainage projects, including but not limited to the drainage projects provided for by ~~General Statutes Chapter 156;~~ Chapter 156 of the General Statutes; and water resources development projects, including but not limited to the federal water resources development projects provided for by ~~General Statutes Chapter 143, Article 21.~~ Article 21 of Chapter 143 of the General Statutes.
(9) Cemeteries.
(10) Law enforcement if all of the following apply:
a. The population of the county is over ~~five hundred thousand~~ 500,000 according to the most recent federal decennial census.
b. The county has an interlocal agreement with a city in the county under which the city provides law enforcement services in the entire unincorporated area of the county.
c. The county will pay to the city the following percentages of the city-county police department budget if there are no significant changes to the city's statutory annexation authority:
1. 9.60% for fiscal years 1995-96 and 1996-97.
2. 7.60% for fiscal years 1997-98 and 1998-99.
3. 5.60% for fiscal years 1999-2000 and 2000-2001.
4. 3.60% for fiscal years 2001-02 and 2002-03.
5. 1.60% for fiscal years 2003-04 and 2004-05.

Provided, if the difference between the ratio of the population in the unincorporated area to the total population served by the city-county police department and the rate for the current year as stated above is greater than fifteen percent (15%), ~~the~~ the county's agreement to pay such percentages can be amended to reflect that difference."

Section 25. Chapter 261 of the 1995 Session Laws is repealed.

Section 26. Section 2 of Chapter 627 of the 1995 Session Laws reads as rewritten:

"Sec. 2. G.S. ~~113-133(e)~~ 113-133.1(e) is amended by deleting the words 'Currituck: Session Laws 1959, Chapter 545.'"

Section 27. The Revisor of Statutes is authorized to renumber or reletter those sections and any parts of sections of the General Statutes that have been published in the General Statutes of North Carolina prior to the 1997 Session of the 1997 General Assembly and have a number or letter designation that is not compatible with the General Assembly's computer program database to be implemented in 1997 or 1998. This authority is in addition to the authority contained in G.S. 164-10.

Section 28. Effective January 1, 1998, G.S. 1-339.25(a), as amended by Section 18 of S.L. 1997-83 and Section 1 of S.L. 1997-119, reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). ~~the the the~~ An upset bid shall be made by delivering to the clerk of superior court, with whom the report of the sale was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale was filed, by the close of normal business hours on the tenth day after the filing of the report of sale, and if the tenth day shall fall upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when ~~said~~ the office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b) of this section."

Section 29. G.S. 20-4.01(27)d1. reads as rewritten:

"d1. Moped. -- ~~Vehicles having~~ A vehicle that has two or three ~~wheels and operable pedals and equipped with~~ wheels, no external shifting device, and a motor ~~which~~ that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface."

Section 30. G.S. 20-28.2(a), as amended by Section 1.1 of S.L. 1997-379, reads as rewritten:

"(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or 20-17.2; or

(2) G.S. 20-16(a)(7), ~~20-17(1), or 20-17(9),~~ 20-17(a)(1), or 20-17(a)(9), if the offense involves impaired driving."

Section 31. G.S. 20-28.3(a), as enacted by Section 1.2 of S.L. 1997-379, reads as rewritten:

"(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired ~~drivers~~ driving license ~~revocation. The revocation of a person's drivers license is an impaired drivers license revocation for purposes of this section if the revocation is pursuant to:~~

~~(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or 20-17.2; or~~

~~(2) G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved impaired driving.~~ revocation as defined in G.S. 20-28.2(a)."

Section 32. Effective December 1, 1997, G.S. 20-7(a1), as amended by Section 8 of S.L. 1997-16, reads as rewritten:

"(a1) Motorcycles and Mopeds. -- To drive a motorcycle, a person ~~must have~~ shall have:

(1) ~~a motorcycle learner's permit, a~~ A full provisional license with a motorcycle learner's permit; ~~and a motorcycle endorsement, or a~~

(2) A regular drivers license with a motorcycle learner's permit; or

(3) Either:

a. A full provisional license; or

b. A regular drivers license, ~~and~~ with a motorcycle endorsement.

Subsection (a2) of this section sets forth the requirements for a motorcycle learner's permit.

To obtain a motorcycle endorsement, a person ~~must~~ shall demonstrate competence to drive a motorcycle ~~by~~ by:

(1) ~~passing~~ Passing a road ~~test and~~ test;

(2) Passing a written or oral test concerning ~~a motorcycle~~ motorcycles; and

(3) ~~must pay~~ Paying the fee for a motorcycle endorsement.

Neither a drivers license nor a motorcycle endorsement is required to drive a moped."

Section 33. Effective December 1, 1997, G.S. 20-7(a2), as enacted by Section 9 of S.L. 1997-16, reads as rewritten:

"(a2) Motorcycle Learner's Permit. -- The following persons are eligible for a motorcycle learner's permit:

(1) A person who is at least 16 years old but less than 18 years old and has ~~a limited provisional license or~~ a full provisional license issued by the Division.

(2) A person who is at least 18 years old and has a license issued by the Division.

To obtain a motorcycle learner's permit, an applicant ~~must~~ shall pass a vision test, a road sign test, and a written test specified by the Division. A motorcycle learner's permit expires 18 months after it is issued. The holder of a motorcycle learner's permit may not drive a motorcycle with a passenger. ~~The holder of a motorcycle learner's permit who has a limited provisional license may drive the motorcycle only at a time when the license holder could drive a motor vehicle without supervision under G.S. 20-11.~~ The fee for a motorcycle learner's permit is the amount set in G.S. 20-7(l) for a learner's permit."

Section 34. (a) G.S. 20-28.6, as enacted in Section 1.5 of S.L. 1997-379, reads as rewritten:

"**§ 20-28.6. Forfeiture of right of registration.**

(a) A person convicted of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 forfeits the right to register or have registered a motor vehicle in the person's name until the person's drivers license is restored. The trial judge at the sentencing hearing on the person's charge of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 shall order the defendant's rights of registration forfeited for the period the defendant's drivers license is revoked. The defendant shall be ordered to surrender the registration on all motor vehicles registered in the defendant's name to the Division within 10 days of the date of the order. Information in the order pertaining to the registration of motor vehicles shall be transmitted electronically or otherwise by the clerk of superior court to the Division. The Division shall not thereafter register a motor vehicle in the defendant's name until the defendant's drivers license has been restored.

(b) A registered owner other than the operator of the vehicle that is seized pursuant to G.S. 20-28.3 who is not an innocent party pursuant to G.S. 20-28.2 forfeits the right to register or have registered in the person's name the motor vehicle seized, until the drivers license of the person whose driving violation resulted in the motor vehicle being seized is restored. The trial judge on the person's charge of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 shall order the registered owner's rights of registration for the seized motor vehicle forfeited for the period the defendant's drivers license is revoked after an opportunity for a hearing and a determination that the requirements of subsections (a) through (c) of G.S. 20-28.2 exist. The registered owner shall be ordered to surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the order. Information in the order pertaining to the registration of motor vehicles shall be transmitted electronically or otherwise by the clerk of superior court to the Division. The Division shall not thereafter register the motor vehicle seized in the registered owner's name until the defendant's drivers license has been restored."

(b) G.S. 20-139.1(b5), as enacted in Section 5.4 of S.L. 1997-379, reads as rewritten:

"(b5) Subsequent Tests Allowed. -- A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of the charging officer. If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

Section 35. G.S. 20-183.8C(b), as amended by Section 7 of S.L. 1997-29, reads as rewritten:

"(b) Type II. -- It is a Type II violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

(1) Use the identification code of another to gain access to an emissions analyzer.

(2) Keep inspection stickers and other compliance documents in a manner that makes them easily accessible to individuals who are not inspection mechanics.

(3) Put an emissions inspection sticker on a vehicle that is required to have one of the following emissions control devices but does not have it:

a. Catalytic converter.
b. PCV valve.
c. Thermostatic air control.
d. Oxygen sensor.
e. Unleaded gas restrictor.
f. Gasoline tank cap.
g. Air injection system.
h. Evaporative emissions system.
i. Exhaust gas recirculation (EGR) valve.

(4) Put an emissions inspection sticker on a vehicle without performing a visual inspection of the vehicle's exhaust system and checking the exhaust system for leaks.

(5) Impose no fee for an emissions inspection of a vehicle or the issuance of an emissions inspection sticker or impose a fee for one of these actions in an amount that differs from the amount set in ~~G.S. 20-187.3.~~ G.S. 20-183.7."

Section 36. G.S. 20-376(1) reads as rewritten:

"(1) Federal safety regulations. -- The federal motor carrier safety regulations contained in 49 ~~U.S.C. Subchapter B, Parts 350 through 399.~~ C.F.R. Parts 382 and 390 through 398."

Section 37. G.S. 20-381(1a) reads as rewritten:

"(1a) To set safety standards for vehicles of motor carriers engaged in foreign, interstate, or intrastate commerce over the highways of this

State and for the safe operation of these vehicles. The Division may ~~stop and inspect a vehicle~~ stop, enter upon, and perform inspections of motor carriers' vehicles in operation to determine ~~if it is in~~ compliance with these standards and may conduct any investigations and tests it finds necessary to promote the safety of equipment and the safe operation on the highway of these vehicles."

Section 38. G.S. 20-381(3) reads as rewritten:

"(3) To relieve the highways of all undue burdens and safeguard traffic thereon by adopting and enforcing rules and orders designed and calculated to minimize the dangers attending transportation on the highways of all hazardous ~~materials.~~ materials and other commodities."

Section 39. Effective June 27, 1997, G.S. 53-212.1, as amended by Section 2.1 of S.L. 1997-241, reads as rewritten:

"**§ 53-212.1. Bank agent for deposit institution affiliate.**

A bank may act as the agent of any depository institution affiliate in receiving deposits, renewing time deposits, closing loans, servicing loans, and receiving payments on loans and other obligations, without being deemed a branch of such affiliate, in accordance with Section 101(d) of the Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994. An affiliate for the purposes of this section shall include (i) an affiliate as defined in Section 2(k) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841(k)), and (ii) an affiliate as defined in Section 23A(b)(1) of the Federal Reserve Act, as amended ~~(12 U.S.C. § 37c(b)(1)) (but~~ (12 U.S.C. § 371c(b)(1)), but without regard to whether the bank or the affiliate is a member of the Federal Reserve ~~System).~~ System."

Section 40. (a) The catch line for G.S. 58-51-61, as enacted in Section 1 of S.L. 1997-312, reads as rewritten:

"**~~§58-51-61.~~ § 58-51-62. Coverage for reconstructive breast surgery resulting from mastectomy.**"

(b) G.S. 58-50-155(a2), as enacted in Section 4 of S.L. 1997-312, reads as rewritten:

"(a2) Notwithstanding G.S. 58-50-123(c), the standard health plan developed and approved under G.S. 58-50-125 shall provide coverage for reconstructive breast surgery resulting from a mastectomy at least equal to the coverage required by ~~G.S. 58-51-61.~~ G.S. 58-51-62."

(c) Subsection (a) of this section is effective retroactively to July 10, 1997. Subsection (b) of this section becomes effective January 1, 1998.

Section 41. If Senate Bill 843 of the 1997 General Assembly becomes law, G.S. 58-31-45 reads as rewritten:

"**§ 58-31-45. Report required of Commissioner.**

The Commissioner must submit to the Governor a full report of his official action under this Article, with such recommendations as commend themselves to ~~him, and it~~

~~shall be embodied in or attached to his biennial report to the General Assembly.~~ him."

Section 42. G.S. 58-68-45(b)(3), as enacted by S.L. 97-259, reads as rewritten:

"(3) Violation of participation or contribution rules. -- The policyholder has failed to comply with a material plan provision relating to employer contribution or group participation rules, as permitted under ~~G.S. 58-68-40(e)~~ G.S. 58-68-40(d) in the case of the small group market or pursuant to this Chapter in the case of the large group market."

Section 43. (a) G.S. 105-305(b), (d), and (e) are repealed.

(b) This section becomes effective July 1, 1997.

Section 43.1. (a) If Senate Bill 929, 1997 Session becomes law, then G.S. 110-91(1) as rewritten by Section 8 of that act reads as rewritten:

"(1) Medical Care and Sanitation. -- The Commission for Health Services shall adopt rules which establish minimum sanitation standards for child care centers and their personnel. The sanitation rules adopted by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; infectious disease control; sleeping facilities; and other items and facilities as are necessary in the interest of the public health. The Commission for Health Services shall allow child care ~~facilities~~ centers to use domestic kitchen equipment, provided appropriate temperature levels for heating, cooling, and storing are maintained. Child care centers that fry foods shall use commercial hoods. These rules shall be developed in consultation with the Department.

The Commission shall adopt rules for child care facilities to establish minimum requirements for child and staff health assessments and medical care procedures. These rules shall be developed in consultation with the Department of Environment, Health, and Natural Resources. Each child shall have a health assessment before being admitted or within 30 days following admission to a child care facility. The assessment shall be done by: (i) a licensed physician, (ii) the physician's authorized agent who is currently approved by the North Carolina Medical Board, or comparable certifying board in any state contiguous to North Carolina, (iii) a certified nurse practitioner, or (iv) a public health nurse meeting the Department of Environment, Health, and Natural Resources' Standards for Early Periodic Screening,

Diagnosis, and Treatment Program. However, no health assessment shall be required of any staff or child who is and has been in normal health when the staff, or the child's parent, guardian, or full-time custodian objects in writing to a health assessment on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Organizations that provide prepared meals to child care centers only are considered child care centers for purposes of compliance with appropriate sanitation standards."

(b) This section becomes effective at the same time as Section 8 of Senate Bill 929, 1997 Session becomes effective.

Section 44. G.S. 113-291.3(b)(8), as enacted by Section 15 of S.L. 1997-142, reads as rewritten:

"(8) The ~~sale of the~~ edible parts of deer raised domestically in another state may be transported into this State and resold as a meat product for human consumption when the edible parts have passed inspection in the other state by that state's inspection agency or the United States Department of Agriculture."

Section 45. G.S. 120-34(a) reads as rewritten:

"(a) The Legislative Services Commission shall publish all laws and joint resolutions passed at each session of the General Assembly. The laws and joint resolutions shall be kept separate and indexed separately. Each volume shall contain a certificate from the Secretary of State stating that the volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the Office of the Secretary of State. The Commission may publish the Session Laws and House and Senate Journals of extra and special sessions of the General Assembly in the same volume or volumes as those of regular sessions of the General Assembly. In printing, the signatures of the presiding officers and the Governor shall be omitted.

The enrolling clerk or the Legislative Services Office shall assign to each bill that becomes law a number in the order the bill became law, and the laws shall be printed in the Session Laws in that order. The number shall be preceded by the ~~letters 'S.L.'~~ phrase 'Session Law' or the letters 'S.L.' followed by the calendar year it was ordered enrolled, followed by a hyphen and the sequential law number. Laws of Extra Sessions shall so indicate. In the case of any bill required to be presented to the Governor, and which became law, the Session Laws shall carry, below the date of ratification, editorial notes as to what time and what date the bill became law. In any case where the Governor has returned a bill to the General Assembly with objections, those objections shall be printed verbatim in the Session Laws, regardless of whether or not the bill became law notwithstanding the objections."

Section 46. (a) G.S. 120-70.80 reads as rewritten:

"**§ 120-70.80. Creation and membership of Joint Legislative Education Oversight Committee.**

The Joint Legislative Education Oversight Committee is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1991 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

(b) G.S. 120-70.82(a) reads as rewritten:

"(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Education Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs."

Section 47. G.S. 122C-261(d) reads as rewritten:

"(d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. ~~If a physician or eligible psychologist recommends outpatient commitment, the clerk or magistrate~~ The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252. However, if the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist

executes an affidavit for inpatient commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266."

Section 48. G.S. 130A-412.1(g), as enacted by Section 2 of S.L. 1997-192, reads as rewritten:

"(g) Hospitals and hospital personnel shall not be subject to civil or criminal liability nor to discipline for unprofessional conduct for actions taken in good faith to comply with this section. This subsection shall not provide immunity from ~~a~~ civil liability arising from gross negligence."

Section 49. (a) G.S. 131E-146(1) reads as rewritten:

"(1) 'Ambulatory surgical facility' means a facility designed for the provision of ~~an ambulatory surgical program.~~ a specialty ambulatory surgical program or a multispecialty ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least ~~one~~ two designated operating ~~room~~ rooms and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1a) and which are performed in a physician or dentist's office does not make that office an ambulatory surgical facility."

(b) This section conforms the definition of the term "ambulatory surgical facility" in the Ambulatory Surgical Facility Licensure Act to the definition of the same term in G.S. 131E-176, to reflect the amendment made to that statute by Section 2 of Chapter 7 of the 1993 Session Laws. However, ambulatory surgical facilities with only one operating room developed prior to the effective date of Chapter 7 of the 1993 Session Laws may still be licensed as if this section had not been enacted.

Section 50. Effective October 1, 1997, G.S. 143-215.84(e), as enacted by Section 4 of S.L. 1997-394, reads as rewritten:

"~~(e)~~ (f) In order to reduce or eliminate the danger to public health or the environment posed by a discharge or release of oil or a hazardous substance, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site if the restrictions meet the requirements of this subsection. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been

approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial action plan in accordance with standards determined: (i) pursuant to rules for remediation of soil or groundwater contamination adopted by the Commission; (ii) with respect to the cleanup of a discharge or release from a petroleum underground storage tank, pursuant to rules adopted by the Commission pursuant to G.S. 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the oil or hazardous substance discharge site. Any land-use restriction may also be enforced by the Department through the remedies provided in this Article, Part 2 of Article 1 of Chapter 130A of the General Statutes, or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the site. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction."

Section 51. Section 8 of Chapter 1436 of the 1957 Session Laws, as rewritten by Section 6 of Chapter 622 of the 1981 Session Laws and by Section 1 of S.L. 1997-163, reads as rewritten:

"Sec. 8. To obtain a license for either a stationary bush blind or a floating bush blind, the applicant shall apply in writing to the clerk to the Game Commission enclosing:

(1) Twenty-five dollars ($25.00) if the applicant is a resident of North Carolina; or

(2) Two hundred fifty dollars ($250.00) if the applicant is not a resident of North Carolina.

In addition to ~~the~~ this nonrefundable application fee, each application shall be accompanied by a nonrefundable processing fee of ten dollars ($10.00). Applicants shall submit proof of North Carolina residency along with each application.

Applicants who are not residents of North Carolina but who were the holders of licensed blinds for the 1996-97 waterfowl season shall be charged as North Carolina residents for all subsequent renewals of that application. However, this exemption terminates if the blind license is not renewed during any subsequent annual renewal period and is not transferable to any different blind location.

Float blinds when licensed shall bear the license number or tag, and the same shall be displayed in a prominent or conspicuous place upon the blind."

Section 52. Section 1 of S.L. 1997-11 reads as rewritten:

"Section 1. That part of Section 1 of Chapter ~~6~~ 7 of the Session Laws of the 1991 Extra Session which rewrote G.S. 163-201(a) is repealed."

Section 53. Section 1 of S.L. 1997-97 reads as rewritten:

"Section 1. ~~Subsection (f) of Chapter 33 of the 1993 Session Laws~~ G.S. 113-291.9(g) is repealed."

Section 54. The prefatory language of Section 1 of S.L. 1997-172 reads as rewritten:

"Section 1. The title of Article 5 of Chapter ~~30~~ 130A of the General Statutes reads as rewritten:".

Section 55. Section 7(a) of S.L. 1997-221 is amended by adding quotation marks at the end.

Section 56. Unless otherwise provided, this act is effective when it becomes law.

Attachment #2

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

8/20/97

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Jo Bain	Smith Anderson
HUGH TILSON	NCHA
Charles Hawk	DOR
NANCY POMERANZ	DOR
ELIZABETH FULLER	DEHNR
M. Paul Rhodes	DEHNR
Bernard Allen	Secy of State
TODD FELTS	DCD/DHR
Paula A. Wolf	Covenant w/NC's Children
Stephanie Jaffee	DHR/DCD
Roslyn Savell	NC Child Care Coalition

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

8/20/197

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCHCFA
	DEHNR

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, August 20, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS#2)**469** Permit Fees/AB
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **13** Simplify and Reduce Inheritance Tax
Draft Number: PCS 1454
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1137** Soil and Water Conservation Plates
Draft Number: PCS 6320
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **115** 1997 Technical Corrections
Draft Number: PCS 6319
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

TUESDAY, AUGUST 26, 1997

9 O'CLOCK - ROOM 544 LOB

The Senate Finance Committee met on August 26th with Senator Kerr presiding. There were 16 committee members present. Senator Kerr announced that this would probably be the last scheduled meeting for the Finance Committee.

H.B. 600 - Foxfire Assessment Clarification

Gerry Cohen, Director of Bill Drafting, was recognized to explain this bill for the bill sponsor. Senator Albertson moved for a "favorable" report and the motion carried. Copy of bill and fiscal note included in the minutes.

H.B. 537 - Relief for Federal Retirees

Representative Grady was recognized to explain H.B. 537 and upon motion by Senator Dalton a proposed committee substitute was adopted for discussion. Cindy Avrette, Staff Attorney, explained the changes in this bill. Ira Swartz, representing the federal retirees, was recognized and spoke in support of this bill. On motions by Senators Webster, McDaniel and Rand, the committee substitute was given a "favorable" report. Copy of bill, committee substitute and explanation included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Agenda is Attachment # 1
Visitors Sign Up Sheet is Attachment # 2
Committee Report is Attachment # 3

Attachment #1

AGENDA

SENATE FINANCE COMMITTEE

August 26, 1997 - 9 o'clock a.m.
Room 544

H.B. 537 - Relief for Federal Retirees - Rep. Grady and Rep. Morgan

H.B. 600 - Foxfire Assessment Clarification - Rep. Holmes

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 600
Committee Substitute Favorable 7/3/97

Short Title: Foxfire Assessment Clarification. (Local)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT CLARIFYING THAT IN MODIFYING THE REQUIREMENTS FOR MAKING STREET ASSESSMENTS IN FOXFIRE VILLAGE UNDER CERTAIN CIRCUMSTANCES, UNDERGROUNDING OF UTILITIES, WHICH WAS PART OF THE PROJECT, IS ALSO SUBJECT TO ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. (a) Section 8.1 of the Charter of Foxfire Village, being Chapter 237 of the 1977 Session Laws as added by Chapter 574 of the 1995 Session Laws, reads as rewritten:

"Sec. 8.1. Street Assessments.

(a) In addition to any authority which is now or hereafter may be granted by general law to the town for making street improvements, the Village Council may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this section.

(b) The Village Council may order street improvements and assess the cost thereof against the abutting property owners, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes without the necessity of a petition meeting the requirements of that Article, upon the finding by the Village Council as a fact that:

(1) The street improvement project does not exceed 30,000 lineal front footage;

(2) The street improvement project involves no more than 200 lots;

(3) The street improvement project consists of a series of streets all of which are contiguous to at least one other street in the project;

(4) The street improvement project abuts at least one other paved street in the Village;

(5) The street improvement project consists solely of a collection of streets for which petitions under Article 10 of Chapter 160A of the General Statutes were received within two years before a preliminary assessment resolution is adopted under the authority of this Article, in accordance with G.S. 160A-223, where:

a. The petitions taken as a whole were signed by at least forty percent (40%) of the owners of property to be assessed, who represent at least forty percent (40%) of all the lineal front footage of the lands abutting on the streets or portions thereof to be improved; but

b. Where for at least five streets in the project, the petitions were signed by at least two-thirds of the owners of property to be assessed, who represent at least two-thirds of all the lineal front footage of the lands abutting on the streets or portions thereof to be improved.

(c) For the purpose of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, underground electrical systems, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

(d) In ordering street improvements without a petition and assessing the cost thereof under authority of this Article, the Village Council shall comply with the procedure provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof. Any assessment under the authority of this act must be under a preliminary assessment resolution adopted under G.S. 160A-223 no later than December 31, 1998.

(e) The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes."

(b) In order to assess for underground electrical systems under the authority of this act, the Village Council may either commence a new assessment proceeding, or may amend the preliminary resolution for an existing assessment proceeding, and may act under petitions already received for the project.

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 537

Short Title: Relief for Federal Retirees. (Public)

Sponsors: Representatives Grady, Morgan (Cosponsors); Allred, Baddour, Braswell, Buchanan, Cansler, Capps, Davis, Hurley, Kinney, McAllister, McComas, Morris, Preston, Rayfield, Redwine, Russell, Sexton, Sherrill, Smith, Warner, and Watson.

Referred to: Finance.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE RELIEF FOR FEDERAL RETIREES AND THE SURVIVING SPOUSES OF FEDERAL RETIREES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.20 reads as rewritten:

"**§ 105-151.20. Credit or partial refund for tax paid on certain federal retirement benefits.**

(a) Purpose; Definitions. -- The purpose of this section is to benefit certain retired federal government workers on account of their public service. The following definitions apply in this section:

(1) Federal retirement benefits. -- Retirement benefits received from one or more federal government retirement plans.

(2) Net pension tax. -- The amount of tax a taxpayer paid under this Division for the 1985, 1986, 1987, and 1988 tax years on federal retirement benefits, without interest, less any part of the tax for which the taxpayer received a credit under this section before 1997 and any part of the tax refunded to the taxpayer before 1997.

(3) Tax year. -- The taxpayer's taxable year beginning on a day in the applicable calendar year.

(b) Credit. -- A taxpayer who received federal retirement benefits during the 1985, 1986, 1987, or 1988 tax year may claim a credit against the tax imposed by this

Division equal to the net pension tax on those benefits. The credit allowed under this section shall be taken in equal installments over the taxpayer's first three taxable years beginning on or after January 1, 1996. The credit allowed under this section may not exceed the amount of tax imposed by this Division reduced by the sum of all credits allowed against the tax, except payments of tax made by or on behalf of the ~~taxpayer.~~ taxpayer; any unused portion of a credit installment may be carried forward to succeeding tax years until the entire installment has been taken.

(c) Partial Refund Alternative. -- If the amount of tax imposed by this Division on the taxpayer for the taxpayer's 1996 tax year, reduced by the sum of all credits allowed against the tax except payments of tax made by or on behalf of the taxpayer, is less than five percent (5%) of the taxpayer's net pension tax for which credit is allowed, the taxpayer is eligible to elect a partial refund under this subsection in lieu of claiming the credit. The partial refund allowed under this subsection is equal to the lesser of eighty-five percent (85%) of the taxpayer's net pension tax or the reduced amount determined by the Secretary as provided in this subsection. To elect the partial refund, an eligible taxpayer must file with the Secretary on or before April 15, 1997, a written request for a partial refund of the taxpayer's net pension. The Secretary shall calculate from these requests eighty-five percent (85%) of the total amount of net pension tax for which partial refunds have been claimed and, if this sum exceeds the amount in the Federal Retiree Refund Account created in this section, shall allocate the amount in the Account among the eligible taxpayers claiming partial refunds by reducing each taxpayer's claimed refund in proportion to the size of the claimed refund. The Secretary shall remit these partial refunds before January 1, 1998.

(d) Substantiation; Deceased Taxpayers. -- In order to claim a refund or credit under this section, a taxpayer must provide any information required by the Secretary to establish the taxpayer's eligibility for tax benefit and the amount of the tax benefit. In the case of a taxpayer who is deceased, the representative of the taxpayer's estate may claim the refund ~~or credit~~ in the name of the deceased ~~taxpayer.~~ taxpayer and, if the taxpayer does not qualify for a refund, the surviving spouse may claim the deceased taxpayer's credit. If there is no surviving spouse, the representative of the taxpayer's estate may claim the credit in the name of the taxpayer.

(e) Federal Retiree Accounts. -- There are created in the Department of Revenue two special accounts to be known as the Federal Retiree Refund Account and the Federal Retiree Administration Account. Funds in the Federal Retiree Refund Account shall be spent only for partial refunds pursuant to subsection (c) of this section. The Department of Revenue may use funds in the Federal Retiree Administration Account only for the costs of administering this section. Funds in the Federal Retiree Refund Account and the Federal Retiree Administration Account shall not revert to the General Fund until the Director of the Budget certifies that the Department of Revenue has completed all duties necessary to implement this section, including processing the escheat of refund checks that have not been cashed."

Section 2. Section 2 of Chapter 19 of the Session Laws, Second Extra Session 1996, is repealed.

Section 3. This act is effective for taxable years beginning on or after January 1, 1996.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 537
Proposed Senate Committee Substitute H537-PCS6322

Short Title: Relief for Federal Retirees. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE RELIEF FOR FEDERAL RETIREES AND THE SURVIVING SPOUSES OF FEDERAL RETIREES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.20 reads as rewritten:

"**§ 105-151.20. Credit or partial refund for tax paid on certain federal retirement benefits.**

(a) Purpose; Definitions. -- The purpose of this section is to benefit certain retired federal government workers on account of their public service. The following definitions apply in this section:

(1) Federal retirement benefits. -- Retirement benefits received from one or more federal government retirement plans.

(2) Net pension tax. -- The amount of tax a taxpayer paid under this Division for the 1985, 1986, 1987, and 1988 tax years on federal retirement benefits, without interest, less any part of the tax for which the taxpayer received a credit under this section before 1997 and any part of the tax refunded to the taxpayer before 1997.

(3) Tax year. -- The taxpayer's taxable year beginning on a day in the applicable calendar year.

(b) Credit. -- A taxpayer who received federal retirement benefits during the 1985, 1986, 1987, or 1988 tax year may claim a credit against the tax imposed by this Division equal to the net pension tax on those benefits. The credit allowed under this section shall be taken in equal installments over the taxpayer's first three taxable

years beginning on or after January 1, 1996. The credit allowed under this section may not exceed the amount of tax imposed by this Division reduced by the sum of all credits allowed against the tax, except payments of tax made by or on behalf of the ~~taxpayer.~~ taxpayer; any unused portion of a credit installment may be carried forward to the 1999 and 2000 tax years.

(c) Partial Refund Alternative. -- If the amount of tax imposed by this Division on the taxpayer for the taxpayer's 1996 tax year, reduced by the sum of all credits allowed against the tax except payments of tax made by or on behalf of the taxpayer, is less than five percent (5%) of the taxpayer's net pension tax for which credit is allowed, the taxpayer is eligible to elect a partial refund under this subsection in lieu of claiming the credit. The partial refund allowed under this subsection is equal to the lesser of eighty-five percent (85%) of the taxpayer's net pension tax or the reduced amount determined by the Secretary as provided in this subsection. To elect the partial refund, an eligible taxpayer must file with the Secretary on or before April 15, 1997, a written request for a partial refund of the taxpayer's net pension. The Secretary shall calculate from these requests eighty-five percent (85%) of the total amount of net pension tax for which partial refunds have been claimed and, if this sum exceeds the amount in the Federal Retiree Refund Account created in this section, shall allocate the amount in the Account among the eligible taxpayers claiming partial refunds by reducing each taxpayer's claimed refund in proportion to the size of the claimed refund. The Secretary shall remit these partial refunds before January 1, 1998.

(d) Substantiation; Deceased Taxpayers. -- In order to claim a refund or credit under this section, a taxpayer must provide any information required by the Secretary to establish the taxpayer's eligibility for tax benefit and the amount of the tax benefit. In the case of a taxpayer who is deceased, the representative of the taxpayer's estate may claim the refund ~~or credit~~ in the name of the deceased ~~taxpayer.~~ taxpayer and, if the taxpayer does not qualify for a refund, the surviving spouse may claim the deceased taxpayer's credit. If there is no surviving spouse, the representative of the taxpayer's estate may claim the credit in the name of the taxpayer but may not carry forward any unused portion of the credit to the 1999 or 2000 tax year.

(e) Federal Retiree Accounts. -- There are created in the Department of Revenue two special accounts to be known as the Federal Retiree Refund Account and the Federal Retiree Administration Account. Funds in the Federal Retiree Refund Account shall be spent only for partial refunds pursuant to subsection (c) of this section. The Department of Revenue may use funds in the Federal Retiree Administration Account only for the costs of administering this section. Funds in the Federal Retiree Refund Account and the Federal Retiree Administration Account shall not revert to the General Fund until the Director of the Budget certifies that the Department of Revenue has completed all duties necessary to implement this section, including processing the escheat of refund checks that have not been cashed."

Section 2. Section 2 of Chapter 19 of the Session Laws, Second Extra Session 1996, is repealed.

Section 3. The Secretary of Revenue shall transfer the sum of eight million dollars ($8,000,000) from the Federal Retiree Refund Account to the General Fund to reimburse the General Fund for the additional loss resulting from this act.

Section 4. Section 3 of this act is effective when it becomes law. The remainder of this act is effective for taxable years beginning on or after January 1, 1996.

EXPLANATION OF HOUSE BILL 537 (PCS):
Relief for Federal Retirees

TO: Senate Finance Committee
FROM: Martha H. Harris, Staff Attorney
DATE: August 25, 1997
SPONSOR: Representatives Grady and Morgan

The proposed committee substitute for House Bill 537 provides the following additional relief to federal retirees who paid unconstitutional North Carolina income tax on their federal retirement benefits in 1985, 1986, 1987, and 1988, but did not protest or request a refund within 30 days as required by law:

1. It allows federal retirees to carry forward for two years the unused portion of their credit for payment of these unconstitutional taxes if they cannot claim the entire tax credit because the credit exceeds their tax liability.
2. It allows the surviving spouse of a deceased federal retiree to take the decedent's credit, including the two-year carryforward. If there is no surviving spouse, the decedent's estate may take the credit, but not the two-year carryforward.

The bill is effective retroactively to the 1996 tax year. It requires the Secretary of Revenue to reimburse the General Fund for the costs of the additional tax relief by transferring $8 million of excess funds in a reserve account created last year.

In 1996, the General Assembly enacted legislation giving federal retirees income tax credits and partial refunds for the North Carolina income taxes they paid on their federal retirement benefits in 1985, 1986, 1987, and 1988. If a federal retiree paid these 1985-88 pension taxes under timely protest, the retiree already received a refund as required by existing law. The 1996 legislation, estimated to cost the General Fund $117 million over three years, provided relief to nonprotesters, who were not legally entitled to a refund or credit.

The 1996 legislation allowed partial refunds and credits as follows: federal retirees who did not make a timely protest and who pay North Carolina income tax may take a State income tax credit equal to the amount of pension taxes they paid. The tax credit was allowed in three equal, annual installments, one for the 1996 tax year, one for the 1997 tax year, and one for the 1998 tax year. For a taxpayer whose 1996 tax liability was less than 5% of the pension taxes the

taxpayer paid during 1985-88, a one-time refund equal to 85% of the pension taxes was allowed in lieu of a credit. The taxpayer was required to claim this refund by April 1, 1997. The 1996 legislation provided that if a federal retiree who would otherwise be eligible for a credit or refund had died, the retiree's estate could claim the credit or refund.

After the 1996 legislation was enacted, legislators began receiving complaints that it did not provide sufficient relief for surviving spouses or for retirees who did not have enough current tax liability to claim the entire credit. If a retiree eligible for the first installment of the credit for the 1996 tax year died in 1996 or thereafter, the surviving spouse could not claim any of the remaining installments of the credit. The 1996 legislation authorized the estate to claim the credit, but estates often have little or no tax liability against which the credit could be claimed. House Bill 537 addresses this complaint by allowing surviving spouses to claim the credit. The other complaint received was from taxpayers who were ineligible for the 85% refund because their tax liability equaled 5% or more of the amount of pension taxes they paid for 1985-88. Those taxpayers might receive a credit equal to anywhere from 15% to 100% of the pension taxes, depending upon whether they had enough tax liability against which to claim the credit. The credit allowed is nonrefundable - to the extent it exceeds the taxpayer's tax liability, it is lost. Taxpayers with lower liability would receive credit for less than 100% of their pension taxes. House Bill 537 addresses this complaint by allowing taxpayers to carry the unused portion of the credit forward to the following two tax years: 1999 and 2000.

The legislative history of the 1996 legislation indicates that the General Assembly intended that some taxpayers would not receive 100% credit, either because they died in 1996 or later or because their potential credit exceeded their tax liability against which it could be claimed. In the 1996 Second Extra Session, the Senate and the House of Representatives had different approaches to granting relief to nonprotesters for the taxes they paid on their federal pensions from 1985 through 1988. The House passed House Bill 30 (Rep. Grady), which would have provided a full refund of all taxes paid, through a refundable credit payable over four years. If the retiree died, the surviving spouse or estate was entitled to the refund. The estimated cost of the bill was a total of $142.8 million. In contrast, the Senate passed a Senate Committee Substitute for House Bill 30 that provided only partial relief for an estimated total cost of $117.7 million. This version of the bill provided only nonrefundable credits and did not provide relief for surviving spouses of deceased retirees. The matter went to conference and the Senate plan prevailed. The two limitations now complained of are the reason the Senate plan cost less than the House plan.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL ESTIMATE

BILL NUMBER: HOUSE BILL 537 (PROPOSED COMMITTEE SUBSTITUTE)
SHORT TITLE: REFUND FOR FEDERAL RETIREES

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES ($MILLION)					
State General Fund*			-2.5	-1.2	-.4
Federal Retiree Reserve	-4.7	-3.3			

PRINCIPAL DEPARTMENT AFFECTED: Department of Revenue

EFFECTIVE DATE: Taxable years beginning on or after January 1, 1996.

*Impact may be treated as nonrecurring for budget purposes.

BILL SUMMARY: The 1996 General Assembly approved legislation that provided relief to federal retirees on the state income tax paid on their pensions during the 1985-88 period, net of any relief already granted (primarily for 1988 tax year). **For the majority of retirees, the relief is provided through a 3-year income tax credit, beginning with the 1996 tax year. In addition, the 1996 bill allowed the representative of a retiree's estate to claim the relief in the name of a deceased retiree.**

The Senate Committee Substitute for House Bill 537 allows an unused credit to be carried forward for two years after the 1996-98 three-year credit period. In the case of a deceased retiree, the surviving spouse will now be able to claim the credit. Finally, the right of an estate to claim the credit in the case of no surviving spouse would end with **the 1998 tax year.**

The cost of the additional relief for the 1997-98 and 1998-99 fiscal years would be financed by earmarking most of the remaining proceeds in the Federal Retiree Refund Account. The Account is a special budge t reserve established to pay one-time refunds to federal retirees who do not normally file and inco me tax return or whose tax liability is very small. Of the $25 million earmarked into the Account, a maximum of $10.5 million will be needed for the one-time refund for certain retirees and $5.6 million was transferred to address refunds ordered by the courts for certain tax protestors. This will leave an estimated $8.9 million that will ultimately revert.

(COVER)

ASSUMPTIONS AND METHODOLOGY: The estimated cost of the 1996 legislation providing refunds and tax credits to federal retirees was $117.8 million. This was $24.9 million less than the $142.7 million of cost if all retirees were living and able to obtain 100% relief. Based on mortality data it is estimated that 25% of the retirees have passed away since the 1985-88 period.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Dave Crotts
DATE: August 25, 1997

Attachment # 2

VISITOR REGISTRATION SHEET

Senate Finance — Name of Committee

Aug. 26, 1997 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fran Lefevers	Fed Rel. Task Force
Lyman Cooper	CSX Corp.
Nancy Pomeranz	DOR
Jan Crotts	NC Assoc. of Sch. Adm.
Patricia Bowden	NCACC
Evelyn Hawthorne	NCHA
Amy Jo Bain	Smith Anderson
Jane Upchurch	CPA
Earl Zepp	OSBM

Attachment # 3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

AMENDED REPORT

Tuesday, August 26, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS) **600** Foxfire Assessment Clarification.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **537** Relief for Federal Retirees.
Draft Number: PCS6322
Sequential Referral: Appropriations
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comment: HB 600 and 537

SENATE FINANCE COMMITTEE

TUESDAY, AUGUST 26, 1997

2:00 P.M. - ROOM 544 LOB

The Senate Finance Committee met. There were 17 members of the Committee present. Senator David W. Hoyle, Co-Chairman, called the meeting to order.

S. B. 594 - Cumberland Local Act

Senator Rand came to explain the bill. Senator Lee moved for adoption of a proposed committee substitute, motion passed. Senator Lee moved for a "favorable" report, motion passed.

Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 594

Short Title: Cumberland Local Act. (Local)

Sponsors: Senator Rand.

Referred to: Rules and Operations of the Senate.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO CUMBERLAND COUNTY.

The General Assembly of North Carolina enacts:

Section 1. This act applies to Cumberland County only.

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 594
Proposed Committee Substitute S594-CSLCX-8/26

Short Title: Local Sales Tax for Schools. (Local)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN COUNTIES TO LEVY ONE-CENT LOCAL SALES AND USE TAXES FOR PUBLIC SCHOOL BUILDINGS.

The General Assembly of North Carolina enacts:

Section 1. This act applies to Cabarrus, Cumberland, Franklin, and Johnston Counties only.

Section 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 44.

"Second One-Cent (1¢) Local Government Sales and Use Tax.

"§ 105-525. Short title.

This Article is the Second One-Cent (1¢) Local Government Sales and Use Tax Act.

"§ 105-526. Limitations.

This Article applies only to counties that levy the first one-cent (1¢) sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, and the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter.

"§ 105-527. Levy of tax.

The board of commissioners of a county may, by resolution, levy one percent (1%) local sales and use taxes in addition to any

other State and local sales and use taxes levied pursuant to law. Before adopting a resolution under this section, the board of commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.

"§ 105-528. Administration of taxes.

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Article 44 of Chapter 105 of the General Statutes'.

A tax levied under this Article does not apply to the sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

"§ 105-529. Expiration.

A tax levied under this Article expires ten years after the effective date of its levy. A county's authorization to levy a tax under this Article expires ten years after the effective date of the first tax a county levies under this Article, even if the tax has not remained in effect for the entire ten-year period. The expiration of a tax pursuant to this Article does not affect the rights or liabilities of a county, a taxpayer, or another person arising under the expired tax; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before its expiration.

"§ 105-530. Distribution and use of taxes.

(a) Distribution. -- The Secretary shall, on a quarterly basis, distribute to each taxing county the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the quarterly distribution.

(b) Use. -- The proceeds of a tax levied under this Article may be used only for public school capital outlay purposes or to retire debt incurred by the county for these purposes after January 1, 1997."

Section 3. A tax levied under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, does not apply

to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 44 of Chapter 105 of the General Statutes.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 594
Proposed Committee Substitute S594-PCSX1889

Short Title: Local Sales Tax for Schools. (Local)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN COUNTIES TO LEVY ONE-CENT LOCAL SALES AND USE TAXES FOR PUBLIC SCHOOL BUILDINGS.

The General Assembly of North Carolina enacts:

Section 1. This act applies to Cabarrus, Cumberland, Franklin, and Johnston Counties only.

Section 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 44.

"Second One-Cent (1¢) Local Government Sales and Use Tax.

"**§ 105-525. Short title.**

This Article is the Second One-Cent (1¢) Local Government Sales and Use Tax Act.

"**§ 105-526. Limitations.**

This Article applies only to counties that levy the first one-cent (1¢) sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, and the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter.

"**§ 105-527. Levy of tax.**

The board of commissioners of a county may, by resolution, levy one percent (1%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Before adopting a resolution under this section, the board of

commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.

"**§ 105-528. Administration of taxes.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of the additional taxes authorized by this Article shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to 'this Article' mean 'Article 44 of Chapter 105 of the General Statutes'.

A tax levied under this Article does not apply to the sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

"**§ 105-529. Expiration.**

A tax levied under this Article expires 10 years after the effective date of its levy. A county's authorization to levy a tax under this Article expires 10 years after the effective date of the first tax a county levies under this Article, even if the tax has not remained in effect for the entire 10-year period. The expiration of a tax pursuant to this Article does not affect the rights or liabilities of a county, a taxpayer, or another person arising under the expired tax; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the expired tax before its expiration.

"**§ 105-530. Distribution and use of taxes.**

(a) Distribution. -- The Secretary shall, on a quarterly basis, distribute to each taxing county the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month and shall include them in the quarterly distribution.

(b) Use. -- The proceeds of a tax levied under this Article may be used only for public school capital outlay purposes or to retire debt incurred by the county for these purposes after January 1, 1997."

Section 3. A tax levied under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, does not apply to construction materials purchased to fulfill a lump sum or unit price contract entered into or awarded before the effective date of the levy or entered into or awarded pursuant to a bid made before the effective date of the levy when the construction materials would otherwise be subject to the tax levied under Article 44 of Chapter 105 of the General Statutes.

Section 4. This act is effective when it becomes law.

Attachment #1

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, August 26, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **594** Cumberland Local Act

Draft Number:	PCSX1889
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: None

SENATE FINANCE COMMITTEE

WEDNESDAY, AUGUST 27, 1997

The Senate Finance Committee met in the Chamber of Senate. Members of the Committee gathered around the desks of Senators Hoyle and Kerr for this Meeting. Senator Hoyle called the meeting to order.

H. B. 39 - Swepsonville Incorporation

Senator Webster moved for adoption of a proposed committee substitute, motion passed. Senator Webster moved for a "favorable" report, motion passed.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 39
Second Edition Engrossed 3/11/97
Proposed Senate Committee Substitute H39-PCS1458

Short Title: Swepsonville Incorporation. (Local)

Sponsors:

Referred to:

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE INCORPORATION OF THE TOWN OF SWEPSONVILLE AND THE SIMULTANEOUS DISSOLUTION OF THE SWEPSONVILLE SANITARY DISTRICT, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. In accordance with G.S. 130A-81(1), the Town of Swepsonville is incorporated, and the Swepsonville Sanitary District is simultaneously dissolved. Such incorporation and dissolution are subject to referendum.

Section 2. A Charter for the Town of Swepsonville is enacted to read:

"CHARTER FOR THE TOWN OF SWEPSONVILLE.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Swepsonville are a body corporate and politic under the name 'Town of Swepsonville'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Swepsonville are as follows:

Tract One:

A certain tract or parcel of land located in Thompson Township, Alamance County, North Carolina, and more particularly described as follows:

BEGINNING at a point located on State Highway 2158 at the center of a bridge across the Haw River in Alamance County, North Carolina; running thence from said point with SR 2158 the following courses and distances:

S. 84 deg. 36' E. 260.00 feet; S. 81 deg. 48' E. 98.76 feet; S. 75 deg. 16' E. 65.41 feet; S. 67 deg. 27' E. 97.49 feet; S. 56 deg. 56' E. 98.40 feet; S. 48 deg. 44' E. 89.37 feet; running thence in the vicinity of George Bason Road, the following courses and distances: N. 55 deg. 49' E. 251.06 feet; S. 16 deg. 00' E. 178.3 feet; N. 30 deg. 54' E. 778.2 feet; N. 86 deg. 40' E. 301.6 feet to a point in George Bason Road; running thence with an unnamed road, S. 14 deg. 12' E. 164.85 feet to a point; running thence N. 85 deg. 58' E. 168.9 feet to a point; running thence S. 10 deg. 22' E. 238.5 feet to a point; thence S. 6 deg. 16' W. 213.7 feet to a point; running thence N. 61 deg. 29' E. 836.7 feet to a point; running thence S. 35 deg. 33' W. 135.6 feet; running thence S. 47 deg. 20' E. 759.4 feet to a point; running thence in the vicinity of NC Highway 119 and NC Highway 54, the following courses and distances: N. 85 deg. 45' E. 330.00 feet; N. 82 deg. 53' E. 100.00 feet; N. 7 deg. 07' 27" W. 334.4 feet; N. 83 deg. 01' 53" E. 200.97 feet; N. 7 deg. 15' W. 66.06 feet; N. 82 deg. 45' E. 120.12 feet; S. 7 deg. 15' E. 583.22 feet to a point; N. 83 deg. 30' E. 193.11 feet; N. 70 deg. 19' E. 224.55 feet; N. 84 deg. 10' E. 90 feet; N. 4 deg. 485' W. 143.9 feet; N. 85 deg. 15' E. 528 feet; S. 89 deg. 16 E. 330.98 feet; N. 85 deg. 33' E. 778 feet; N. 63 deg. 03' E. 141.5 feet; N. 23 deg. 11' W. 272.25 feet; N. 26 deg. 57' W. 898.3 feet; N. 78 deg. 23' E. 331.3 feet to a point in N. C. Highway 54; thence N. 80 deg. 37' 40" E. 43.07 feet; N. 39 deg. 38' 20" E. 233.38 feet; N. 47 deg. 19' 10" E. 533.29 feet; N. 47 deg. 57' E. 1651.57 feet; S. 36 deg. 18' E. 1282.22 feet to a point in N. C. Highway 119; thence with N. C. Highway 119 S. 49 deg. 06' 42" W. 674.29 feet; continuing with N. C. Highway 119, S. 49 deg. 07' W. 540.00 feet; thence in the vicinity of N. C. Highway 119 the following courses and distances: S. 26 deg. 00' E. along an unnamed road, 283.2 feet; S. 49 deg. 02' W. 207.93 feet; S. 67 deg. 01' W. 105.76 feet; S. 49 deg. 02' W. 260 feet; N. 40 deg. 58' W. 50 feet; S. 49 deg. 02' W. 147.14 feet; S. 47 deg. 40' W. 74.69 feet; S. 00 deg. 48' E. 75.11 feet; S. 47 deg. 40' W. 1170 feet, crossing NC Highway 54 and SR 2164; S. 85 deg. 33' W. 1270 feet; S. 16 deg. 48' W. 113.34 feet; S. 89 deg. 37' W. 251.6 feet; N. 3 deg. 20' W. 85.53 feet; S. 86 deg. 38' W. 715.35 feet; N. 86 deg. 28' W. 70.24 feet; S. 1 deg. 25' E. 51 feet; S. 82 deg. 50' W. 108.5 feet; S. 1 deg. 25' E. 95 feet; S. 83 deg. 25' W. 262 feet; N. 2 deg. 20' W. 153.15 feet; S. 86 deg. 05' W. 353.88 feet; N. 1 deg. 25' W. 71.5 feet; S. 88 deg. 35' W. 148.5 feet; S. 52 deg. 13' W. 566.8 feet; S. 49 deg. 17' W. 334.5 feet; S. 48 deg. 02' W. 345 feet; running thence in the vicinity of SR 2158 the following courses and distances:

S. 43 deg. 24' E. 48.3 feet; S. 50 deg. 04' W. 23 feet; S. 43 deg. 32' E. 367.27 feet; N. 38 deg. 29' E. 354.96 feet; S. 66 deg. 36' E. 135.06 feet; S. 20 deg. 54' W. 213.1 feet; S. 26 deg. 41' W. 100 feet; S. 35 deg. 12' W. 100 feet; S. 44 deg. 57' W. 35.48 feet; S. 43 deg. 16' E. 154.38 feet; N. 79 deg. 44' E. 9.69 feet; N. 68 deg. 44' E. 209.22 feet; N. 21 deg. 44' E. 42.24 feet; N. 30 deg. 09' E. 59.04 feet; N. 82 deg. 44' E. 138 feet; S. 38

deg. 14' W. 158.88 feet; S. 39 deg. 34' E. 364.3 feet; S. 61 deg. 34' E. 154.16 feet; S. 77 deg. 38' E. 330.64 feet; S. 04 deg. 17' W. 485.7 feet; S. 83 deg. 38' E. 724.10 feet; S. 0 deg. 11' E. 132 feet; N. 83 deg. 38' W. 330 feet; S. 0 deg. 11' E. 284.7 feet; S. 56 deg. 05' W. 357.9 feet to a point in SR 2158; running thence N. 35 deg. 24' W. 118.19 feet with SR 2158; thence S. 59 deg. 45' W. 513.1 feet; thence N. 33 deg. 54' W. 270.40 feet; thence N. 83 deg. 43' W. 394 feet; thence N. 1 deg. 24' E. 101.07 feet with SR 2198; thence N. 88 deg. 36' W. 200 feet; thence N. 1 deg. 24' E. 535 feet; thence N. 8 deg. 20' E. 259.45 feet; thence N. 65 deg. 46' 30" W. 100.54 feet; N. 60 deg. 57' W. 54.8 feet; N. 47 deg. 01' W. 59.7 feet, crossing Woodside Avenue; thence N. 52 deg. 14' 40" W. 59.90 feet; thence N. 6 deg. 59' E. 78.97 feet; thence N. 7 deg. 48' W. 176.48 feet; thence N. 89 deg. 52' W. 70.55 feet; thence S. 63 deg. 29' W. 580 feet; thence N. 87 deg. 20' W. 135 feet; thence N. 41 deg. 40' W. 100 feet; thence N 36 deg. 00' W. 108.80 feet; thence S. 47 deg. 30' W. 87 feet; thence S. 75 deg. 03' W. 142.58 feet; thence N. 8 deg. 00' W. 487.7 feet; running thence S. 69 deg. 50' W. 285.0 feet to a point in the Haw River; running thence with the center of the Haw River 2,500 feet to the point of BEGINNING, and containing 313.40 acres, more or less, as shown on Boundary and Sanitary Sewer Map, Swepsonville Sanitary Sewer District, dated October 25, 1983, and prepared by Alley, Williams, Carmen & King, Inc., Engineers and Architects, Job. No. 163-83.

Tract Two:

A certain tract or parcel of land located in Thompson Township, Alamance County, North Carolina, adjoining George Bason Road (SR2156), property owned by W.E. & Mary D. Kirkpatrick, Quarry Development Company, Lacy Overman and Juanita Wilson LaPrade, and being more particularly described as follows:

BEGINNING at a control corner located in the southern edge of the 60' right of way of George Bason Road (SR 2156), a corner with Juanita Wilson LaPrade and property owned by Quarry Development, further known as Stonehaven Subdivision, Section 1; running thence from said control corner along the southern edge of the 60' right of way of George Bason Road (SR 2156), the following courses and distances: N. 65 deg. 27' 26" E. 379.33 feet, N. 73 deg. 35' 15" E. 70.71 feet, N. 65 deg. 27' 26" E. 50 feet, N. 57 deg. 19' 38" E. 70.71 feet, N. 65 deg. 27' 26" E. 940.00 feet, N. 73 deg. 35' 15" E. 70.71 feet, N. 65 deg. 27' 26" E. 50 feet, N. 55 deg 15' 14" E. 71.06 feet and in a curve to the left the following courses and distances: N. 61 deg. 35' 03" E. a chord of 69.95 feet and a radius of 2922.99 feet, N. 59 deg. 25' 42" E. 150.00 chord with a radius of 2922.99, N. 56 deg. 06' 01" E. a chord distance of 189.50 feet, a radius of 2922.99 feet to a control corner; thence along the western edge of property owned by W.E. Kirkpatrick, the following courses and distances: S. 25 deg. 05' 16" E. 56.38 feet, S. 4 deg. 27' 23" W. 331.13 feet, S. 4 deg. 29' 00" W. 54.07 feet; thence along the western edge of property owned by Mary D. Kirkpatrick, S. 4 deg. 20' 00" W. 302.25 feet; thence along the northern edge of property owned by Quarry Development Company the following courses and distances: N. 85 deg. 40' 00" W. 184.18 feet, S. 31 deg. 32' 47" W. 89.41 feet, S. 65 deg. 27' 26" W. 753.86 feet, S. 46 deg. 54' 41" E. 280.00 feet, S. 60 deg. 06' 32" W. 184.39 feet, S. 51 deg. 46' 50" W. 50.08 feet, S. 43 deg. 34' 57" W. 610.71 feet; thence along the northern edge of

property owned by Lacy Overman, N. 44 deg. 46' 01" W. 363.62 feet; thence S. 60 deg. 37' 15" W. 5.00 feet; thence along the eastern portion of property owned by Juanita Wilson LaPrade, the following courses and distances: N. 36 deg. 35' 46" W. 71.95 feet; N. 56 deg. 10' 16" E. 142.00 feet; thence N. 36 deg. 13' 01" W. 661.29 feet to the point of BEGINNING, and containing 32.41 acres, more or less, as depicted in a preliminary final plat, Section 1, Stonehaven Subdivision, by Thompson-Simmons, Inc., Surveyors, dated February 17, 1988.

Tract Three:

A certain tract or parcel of land located in Thompson Township, Alamance County, North Carolina, adjoining Bason Road, Piedmont Crescent Recreational and Development Company, Inc., and more particularly described as follows:

BEGINNING at an existing iron pipe located in the northern edge of the 60' right of way of Bason Road, a corner with property owned by Piedmont Crescent Recreational and Development Company, Inc., and Lot 1, Section 1 Quarry Hills Subdivision (Plat Book 38 at Page 54); thence running along the northern edge of Bason Road 60' right of way, S. 62 deg. 57' 01" W. 320.00 feet to an existing iron pipe; thence running along the western edge of Lot 4, Section 1 Quarry Hills Subdivision (Plat Book 38 at page 54), N. 27 deg. 02' 59" W. 181.38 feet to an existing iron pipe; thence running along the northern bounds of Lots 1 through 4, Section 1 Quarry Hills Subdivision, N. 63 deg. 39' 10" E. 322.59 feet to an existing iron pipe; thence running S. 26 deg. 13' 20" E. 177.44 feet to the point of BEGINNING and containing 1.323 acres, more or less.

This description is based on the plat recorded in the Office of the Register of Deeds for Alamance County, North Carolina in Plat Book 38 at page 54 by Thompson-Simmons, Inc., dated November 15, 1988.

Tract Four:

A certain tract or parcel of land located in Thompson Township, Alamance County, North Carolina, adjoining George Bason Road, Section 1, Quarry Hills Subdivision, and property owned by William Mann, and being more particularly described as follows:

BEGINNING at an existing iron pipe located in the northern edge of George Bason Road, a corner with Lot 4, Section 1 Quarry Hills Subdivision, George Bason Road 60' right of way and Lot 5, Section 2 Quarry Hills Subdivision (Plat Book 42 at page 51); thence running from said existing iron pipe along the boundary between Lots 4 and 5, N. 27 deg. 02' 59" W. 181.38 feet to an existing iron pipe; thence running along the southern edge of property owned by William Mann, S. 63 deg. 39' 10" W. 232.77 feet to an existing iron pipe; thence running S. 56 deg. 38' 20" W. 27.42 feet to a new iron pipe; thence running along the western edge of Lot 2, Section 2 Quarry Hills Subdivision, S. 27 deg. 02' 59" E. 187.92 feet to a new iron pipe located in the northern edge of the 60' right of way of George Bason Road; thence running in a curve to the right, N. 60 deg. 14' 06" E. a distance of 100.11 having a radius of 3699.36 feet and an arc of 100.12 feet to a new iron pipe; continuing in a curve to the right, N. 61 deg. 37' 48" E. a distance of 80.02 feet, having a radius of 3699.36 feet and an arc of 80.02 feet to a new iron pipe; thence continuing N. 62 deg. 52' 05" E.

in a curve to the right with a distance of 80.00 feet, a radius of 3699.36, having an arc of 80 feet to the point of BEGINNING, and containing 1.102 acres, more or less, as shown on a plat recorded in the Office of the Register of Deeds of Alamance County entitled 'Final Plat, Section 2 Quarry Hills Subdivision', in Plat Book 42 at page 51.

Tract Five:

A certain tract or parcel of land lying and being in Thompson Township, Alamance County, North Carolina, adjoining George Bason Road, property owned by Will C. Mann, Ruth M. Bason and Quarry Hills Subdivision, Section 2 and more particularly described as follows:

BEGINNING at an existing iron pipe located in the northern edge of the 60' right of way of George Bason Road, a corner with Lot 8 Section 3, Quarry Hills Subdivision (Plat Book 44 at page 71) and Lot 7 Quarry Hills Subdivision Section 2 (Plat Book 41 at page 51); thence running in a curve to the left along the northern edge of George Bason Road 60' right of way the following courses and distances: S. 53 deg. 09' 42" W. a distance of 79.98 feet, having a radius of 1085.33 and an arc of 80 feet to an existing iron pipe, S. 48 deg. 56' 18" W. a distance of 79.98 feet, a radius of 1085.33 feet and an arc of 80 feet, S. 44 deg. 42' 54" W. a distance of 79.98 feet, a radius of 1085.33 feet and an arc of 80 feet, S. 42 deg. 04' 30" W. 20.02 feet having a radius of 1085.33 feet and an arc of 20.02 feet to an existing iron pipe; thence continuing along the northern edge of George Bason Road, S. 41 deg. 02' 21" W. 269.35 feet; thence in a curve to the left, S. 41 deg. 17' 46" W. having a distance of 30.63 feet, a radius of 1040.38 feet and an arc of 30.63 feet to an existing iron pipe; thence running in a curve to the left with property owned by Ruth M. Bason and Lot 14 Section 3, Quarry Hills Subdivision (Plat 44 at page 71), N. 84 deg. 12' 50" W. 121.67 feet, a radius of 180 feet and an arc of 124.11 feet to an existing iron pipe; thence running S. 76 deg. 15' 00" W. 8.18 feet; thence along the western edge of Lot 14, N. 02 deg. 48' 00" W. 184.50 feet; thence along the southern edge of property owned by Will C. Mann, a boundary with Lots 8 through 14 Quarry Hills Subdivision, Section 3, the following courses and distances: N. 87 deg. 12' 00" E. 30 feet; N. 42 deg. 41' 10" E. 336.99 feet; N. 56 deg. 38' 20" E. 221.68 feet to an existing iron pipe; thence running along boundary of Lots 7 and 8 of Quarry Hills Subdivision, S. 27 deg. 03' 54" E. 187.91 feet to point of BEGINNING, and containing 2.91 acres, more or less, as depicted on a final plat Section 3 Quarry Hills Subdivision, recorded in Plat Book 44 at page 71 in the Office of the Register of Deeds for Alamance County Registry and being Lots 8 through 14, inclusive.

Tract Six:

A certain tract or parcel of land lying and being in Thompson Township, Alamance County, North Carolina, adjoining Section 1 Stonehaven Subdivision, Quarry Development, Mary D. Kirkpatrick, and Carroll Eric Barnes, and being more particularly described as follows:

BEGINNING at a new iron pipe located in the southern edge of Graystone Drive, a corner with Lot 67, Section 2 Stonehaven Subdivision (Plat Book 50 at page 115), and property owned by Quarry Development Company (Plat Book 35 at page 103); thence running S. 79 deg. 29' 11" W. 85.26 feet to a point in the northern edge of

Graystone Drive, a corner with Lot 65 Stonehaven Subdivision, Section 2; running thence along the western edge of Lots 64 and 65, Stonehaven Subdivision, Section 2, N. 46 deg. 54' 23" W. 420.60 feet; running thence along the southern edge of Stonehaven Subdivision, Section 1 and the northern edge of Stonehaven Subdivision, Section 2, N. 65 deg. 27' 25" E. 753.87 feet to a point in the western edge of Crescent Drive; thence running N. 31 deg. 38' 05" E. 89.15 feet to the eastern edge of Crescent Drive, a new iron pipe; thence running along the northern edge of Lot 54, Section 2 Stonehaven Subdivision, S. 85 deg. 40' 00" E. 184.18 feet to a control corner; thence running along the western edge of property owned by Mary D. Kirkpatrick, S. 04 deg. 20' 00" W. 630.26 feet to a control corner; thence running from said control corner along the northern edge of property owned by Carroll Eric Barnes, S. 75 deg. 10' 58" W. 316.27 feet to an existing iron pipe; thence running S. 13 deg. 44' 14" E. 25.67 feet to a corner of Lot 67, Section 2, Stonehaven Subdivision, Carroll Eric Barnes and Quarry Development Company; thence running S. 58 deg. 16' 14" W. 40.43 feet to a new iron pipe; thence running N. 52 deg. 53' 18" W. 180.00 feet to the point of BEGINNING and BEING SECTION 2, STONEHAVEN SUBDIVISION, as recorded in Plat Book 50 at page 15 in the Office of the Register of Deeds for Alamance County.

Tract Seven:

A certain tract or parcel of land lying and being in Thompson Township, Alamance County, North Carolina, adjoining property owned by Fletcher C. Hunter, Michael W. Williams and Swepsonville Road (SR 2159), and being more particularly described as follows:

BEGINNING at an existing iron pipe located in the Swepsonville Road, a corner with property owned by Fletcher C. Hunter and property owned by Ricky D. Billings; running thence along the western edge of property owned by Fletcher C. Hunter and the eastern edge of property owned by Ricky D. Billings and being the boundary, S. 6 deg 00' 08" E. 1126.04 feet to a point; thence running S. 80 deg. 20' 22" W. 134.23 feet to a point; thence running along the western edge of property owned by Ricky D. Billings and the eastern edge of property owned by Michael W. Williams, N. 05 deg. 52' 15" W. 1122.27 feet to a point in Swepsonville Road (SR 2159); thence running from said point, N. 78 deg. 37' 59" E. 131.95 feet to the point of BEGINNING, and containing 3.402 acres, more or less, as described in a final plat for Ricky D. Billings as recorded in the Office of the Register Deeds for Alamance County in Plat book 38 at page 92.

Tract Eight:

A certain tract or parcel of land located in Thompson Township, Alamance County, North Carolina, adjoining George Bason Road (S.R. 2156), Swepsonville-Saxapahaw Road, the Haw River and property owned by Will C. Mann and being more particularly described as follows:

BEGINNING at an existing iron pipe located in the northern edge of George Bason Road (S.R. 2156) right of way, a corner with the southern corner of Lot 14, Quarry Hills Subdivision, Section 3 (Plat Book 44, page 71); running thence S. 19 deg. 31' 30" W. 50.80 feet to a new iron pipe; thence running N. 27 deg. 20' 16" E. 29.92 feet

to a point in George Bason Road; running thence from said point, S. 55 deg. 23' 51" E. 49.57 feet to a point in Rivers Edge Drive; running thence S. 83 deg. 16' 45" W. 256.66 feet to an existing iron pipe; running thence S. 27 deg. 35' 16" W. 7.84 feet to an existing iron pipe; running thence along the northwestern edge of Lot 2 (Plat Book 9, page 23), S. 30 deg. 32' 55" W. 100.00 feet to an existing iron pipe; running thence S. 27 deg. 40' 53" W. 99.99 feet along the northwestern edge of Lot 3 (Plat Book 9, Page 23) to an existing iron pipe; thence from said pipe, S. 27 deg. 41' 50" W. 119.99 feet to an existing iron pipe; thence S. 27 deg. 43' 18" W. 47.05 feet to a new iron pipe, in the northeast corner of property owned by Don R. Quakenbush and wife, Bobbie L. Quakenbush; running thence along the northwestern edge of property owned by said Quakenbush, S. 52 deg. 49' 28" W. 307.09 feet to an existing iron pipe; continuing along the northwestern edge of property owned by said Quakenbush, S. 52 deg. 38' 28" W. 250.51 feet to a point in Swepsonville-Saxapahaw Road 60' right of way; thence with Swepsonville-Saxapahaw Road, the following courses and distances: N. 50 deg. 04' 01" W. in a curve to the left, a distance of 84.96 feet, radius of 603.10 feet and an arc of 85.03 feet; N. 66 deg. 43' 42" W. in a curve to the left, a distance of 263.58 feet, a radius of 603.10 feet and an arc of 265.72 feet; N. 83 deg. 33' 46" W. in a curve to the left, a distance of 88.60 feet, a radius of 603.10 feet and an arc of 88.68 feet; N. 87 deg. 46' 32" W. 182.61 feet to a point in Swepsonville-Saxapahaw Road; running thence along the eastern edge of the Haw River, N. 20 deg. 13' 36" W. 378.16 feet to a point; continuing along the eastern edge of the Haw River, the following courses and distances: N. 09 deg. 48' 15" W. 232.04 feet; N. 13 deg. 42' 54" W. 240.29 feet; N. 00 deg. 18' 04" E. 224.05 feet; N. 19 deg. 44' 43" E. 111.00 feet; N. 35 deg. 06' 25" E. 187.88 feet; N. 40 deg. 07' 01" E. 224.53 feet to a point in the eastern edge of the Haw River; running thence S. 23 deg. 22' 50" E. 349.72 feet to a new iron pipe; running thence S. 16 deg. 11' 40" E. 99.99 feet to a new iron pipe; running thence S. 07 deg. 07' 20" E. 130.00 feet to a new iron pipe; running thence S. 09 deg. 12' 28" E. 271.71 feet to a new iron pipe; running thence N. 82 deg. 30' 17" E. 315.97 feet to a new iron pipe; running thence along the southern edge of property owned by Will C. Mann, the following courses and distances: N. 75 deg. 18' 09" E. 204.77 feet to a new iron pipe; running thence N. 86 deg. 27' 57" E. 543.65 feet to an existing iron pipe; running thence with the western edge of Lot 14, Quarry Hills Subdivision, Section 3, S. 02 deg. 46' 38" E. 184.54 feet to an existing iron pipe; running thence with a curve towards the southeast having a bearing of N. 70 deg. 52' 37" E. a chord distance of 91.47 feet, a radius of 260.00 feet and an arc distance of 91.95 feet to an existing iron pipe; running thence S. 60 deg. 47' 23" E. 20.71 feet to the POINT OF BEGINNING, containing 28.94 acres, more or less, as described on a survey by Simmons Engineering & Surveying, Inc., dated October 27, 1994, entitled 'Preliminary Plat, Section IV Quarry Hills Subdivision', plat of which is unrecorded. The Presbyterian Home of Hawfields property is excluded from the corporate limits.

"Section 2.2. **Annexation Moratorium.** Until August 26, 2017, the Town of Swepsonville may not annex under Article 4A of Chapter 160A of the General Statutes any property lying on the northeast side of North Carolina Highway 54.

"CHAPTER III.
"GOVERNING BODY.

"Section 3.1. **Structure of the Governing Body; Number of Members.** The governing body of the Town of Swepsonville is the Town Council, which has five members.

"Section 3.2. **Manner of Electing Board.** The qualified voters of the entire Town nominate and elect the members of the Council.

"Section 3.3. **Term of Office of Council Members.** The five members of the Swepsonville Sanitary District Board (including the three elected in 1997) are the initial Town Council members, to serve until their term on the Sanitary District Board would have expired. In 1999 and quadrennially thereafter, two council members shall be elected for four-year terms. In 2001 and quadrennially thereafter, three council members shall be elected for four-year terms.

"Section 3.4. **Selection of Mayor; Term of Office.** The Mayor shall be appointed by the Town Council from among its own membership for a four-year term. The Mayor shall have the right to vote on all questions that come before the Council, but shall have no right to break a tie vote in which the Mayor participated.

"Section 3.5. **Filling of Vacancies.** Vacancies occurring for any reason in the Town Council shall be filled by the remaining members of the Council for the remainder of the unexpired term.

"CHAPTER IV.
"ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** The Town Council shall be elected on a nonpartisan basis and the results determined by the plurality method in G.S. 163-292.

"CHAPTER V.
"ADMINISTRATION.

"Section 5.1. **Mayor-Council Plan.** The Town of Swepsonville operates under the Mayor-Council plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 3. (a) The incorporation referendum under G.S. 130A-81 shall be held on November 4, 1997. Procedures for the referendum are set out in G.S. 130A-81. The Alamance County Board of Elections may adopt a special schedule of notices and absentee voting.

(b) If approved by the voters in accordance with G.S. 130A-81, the incorporation of the Town of Swepsonville and simultaneous dissolution of the Swepsonville Sanitary District shall become effective on the second Monday of the month following when the results of the incorporation referendum under G.S. 130A-81 are certified. The Swepsonville Sanitary District shall take all actions necessary to effect this transfer of the assets and liabilities of the Sanitary District to the Town of Swepsonville.

Section 4. The organizational meeting of the Town Council of the Town of Swepsonville shall be held at 7:00 p.m. on the second Monday of the month following when the results of the incorporation referendum under G.S. 130A-81 are

certified. The transitional provisions of G.S. 130A-81(5) a. through g. shall apply to the Town of Swepsonville and the Swepsonville Sanitary District.

Section 5. This act is effective when it becomes law.

Attachment #1

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co Chair
Senator John Kerr, Co Chair

Wednesday, August 27, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **39** Swepsonville Incorporation.

Draft Number:	PCS1458
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

SENATE FINANCE COMMITTEE

WEDNESDAY, AUGUST 27, 1997

The Senate Finance Committee met in the Senate Chamber at about 5:55 P.M. Seventeen Members of the Committee gathered at the desks of Senators Hoyle and Kerr. Senator Hoyle called the Meeting to order.

H. B. 72 - Oak Ridge Incorporated

Senator Rand moved for a "favorable" report, motion passed.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

NOTE:

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 72
Senate Rules and Operations of the Senate Committee Substitute Adopted 8/14/97

Short Title: Oak Ridge Incorporated. (Local)

Sponsors:

Referred to: Finance.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF OAK RIDGE, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A charter is enacted for the Town of Oak Ridge to read:

"CHARTER OF THE TOWN OF OAK RIDGE.

"CHAPTER 1.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. The inhabitants of the Town of Oak Ridge are a body corporate and politic under the name 'Town of Oak Ridge'. Under that name they have all the rights, powers, duties, privileges and immunities conferred and imposed upon cities by the general law of North Carolina.

"Section 1.2. (a) Article 4A of Chapter 160A of the General Statutes does not apply to the Town of Oak Ridge until July 1, 2017.

(b) G.S. 160A-58.1(b)(2) does not apply to (i) the City of Greensboro as it relates to the Town of Oak Ridge or (ii) the Town of Kernersville as it relates to the Town of Oak Ridge or to property in the Oak Ridge Fire District.

"CHAPTER 2.

"CORPORATE BOUNDARIES.

"Section 2.1. Until changed in accordance with law, the boundaries of the Town of Oak Ridge are as follows:

From the southwestern boundary of the Stokesdale City Limits, south on the east side of the Haw River Road to Pepper Road, south on the east side of Pepper Road to NC

Hwy. 150, east on NC Hwy. 150 to Beason Road, south on the east side of Beason Road to Reedy Fork Creek, east on Reedy Fork Creek to NC Hwy. 68, south on Hwy. 68 to the Oak Ridge Township line, east on the Oak Ridge Township line to Golden Acre Road, north on Golden Acre Road to the intersection with Alcorn Road (includes all properties known as the Golden Acre Subdivision), north on Alcorn Road to Reedy Fork Creek, east on Reedy Fork Creek to the Oak Ridge & Bruce Township line, north to the southern boundary of Stokesdale City Limits, west following the southern boundary of Stokesdale City Limits to the Guilford County line.

"CHAPTER 3.

"GOVERNING BODY.

"Section 3.1. The governing body of the Town of Oak Ridge is the Town Council, which has five members.

"Section 3.2. The qualified voters of the entire Town elect the members of the Town Council.

"Section 3.3. From the effective date of this charter until the organizational meeting of the Town Council after the 1999 municipal elections the Mayor, Mayor Pro Tem, and the other three members of Town Council will be:

Interim Mayor	Bill Parrish
Mayor Pro Tem	Gary Blackburn
Council	Mack Peoples
Council	Greg Bissett
Council	Roger Howerton

The Interim Mayor and Mayor Pro Tem named by this section shall only serve as such if another council member is not chosen for that position as provided by Section 3.5 of this Charter.

"Section 3.4. At the regular Town election in 1999, five council members shall be elected. The persons receiving the three highest numbers of votes shall be elected for four-year terms, and the two persons receiving the next highest numbers of votes shall be elected for two-year terms. In 2001 and quadrennially thereafter, two council members shall be elected for four-year terms. In 2003 and quadrennially thereafter, three council members shall be elected for four-year terms.

"Section 3.5. At the organizational meeting of the initial council and at the organizational meeting after each election, the council shall elect one of its members to serve at its pleasure as Mayor.

"CHAPTER 4.

"ELECTIONS.

"Section 4.1. The Town Council shall be elected by the nonpartisan plurality method as provided by G.S. 163-292. Elections shall be governed by general law except as provided otherwise by this Charter.

"CHAPTER 5.

"ADMINISTRATION.

"Section 5.1. The Town of Oak Ridge shall operate under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"CHAPTER 6.
"TAXATION.

"Section 6.1. Notwithstanding G.S. 160A-209(d), except with the approval of the qualified voters of the Town in a referendum under G.S. 160A-209, the Town may not levy ad valorem taxes in excess of twenty cents (20¢) on the one hundred dollars ($100.00) valuation. This section does not limit taxation to pay the debt service on general obligation indebtedness incurred by the Town in accordance with law."

Section 2. From and after the effective date of the incorporation, the citizens and property in the Town of Oak Ridge shall be subject to municipal taxes levied for the year beginning July 1, 1997, and for that purpose the Town shall obtain from Guilford County a record of property in the area herein incorporate which was listed for taxes as of January 1, 1997, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1997-98, without following the timetable in the local government budget and fiscal control act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1997-98 ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-36 as if taxes had been due and payable on September 1, 1997.

Section 3. (a) The Guilford County Board of Elections, shall conduct an election on the Tuesday after the first Monday in November of 1997 for the purpose of submission of the proposed Charter to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Oak Ridge. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST
Incorporation of the Town of Oak Ridge".

Section 4. In such election if a majority of the votes cast are not cast "For incorporation of the Town of Oak Ridge", then Sections 1 and 2 of this act shall have no force or effect.

Section 5. In such election, if a majority of the votes cast shall be cast "For incorporation of the Town of Oak Ridge", then Sections 1 and 2 of this act shall become effective on the date that the Guilford County Board of Elections determines the result of the election.

Section 6. This act is effective when it becomes law.

Attachment #1

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Wednesday, August 27, 1997

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS)**72** Oak Ridge Incorporated.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: HB 72

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 590

Short Title: Wilson's Mills Charter. (Local)

Sponsors: Representative Creech.

Referred to: Ways and Means, if favorable, Finance.

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CHARTER OF THE TOWN OF WILSON'S MILLS TO DESCRIBE THE TOWN'S BOUNDARIES.

The General Assembly of North Carolina enacts:

Section 1. Sec. 2.1 of the Charter of the Town of Wilson's Mills, being Chapter 12 of the 1995 Session Laws, Second Extra Session 1996, reads as rewritten:

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with law, the boundaries of the Town of Wilson's Mills are as follows:

~~"Beginning at a point where the east R/W line of SR 1914 intersects the southern R/W of Hwy 70 bypass. Thence along the southern R/W of 70 bypass in a westerly direction to where it intersects with Kenneth R. Jones (Twin Creek S/D) thence in a southerly direction to the southeastern corner of Tax Parcel 17507015. Thence following along the southern line of Tax Parcel 17507015 to where it intersects the eastern right of way of Swift Creek Rd. thence along the eastern of Swift Creek Road in a southerly direction to where it intersects with the western line of Glenview Acres thence along the lines of Glenview Acres encompassing above said subdivision to the western R/W line of Swift Creek Rd. thence along said right of way in a northerly direction to where it intersects the southern R/W of Hwy 70 bypass, thence along the southern R/W of Hwy 70 bypass to where it meets the southwestern property corner of Tax Parcel 17507009A at a perpendicular angle thence along the western property line of Tax Parcel 17507009A to where it intersects Wilson Mills Rd's northern R/W. Thence along said R/W in a westerly direction to the western boundary of Tax Parcel 17J0602A thence along the western boundaries of Tax Parcels 17J06023A, 17K07005L, 17J06022A and 17J0621 to the northwest corner of 17J0621 thence along~~

~~the northern and western lines of Tax Parcel 1750621 to where it intersects the southwesterly corner of Tax Parcel 17K07195I thence along the southern property line of Tax Parcel 17K071951 to where it joins Tax Parcel 17K0700SE. Thence along the western and northern line of Tax Parcel 17K0700SE to the eastern R/W of Powhattan Road thence along the eastern R/W of Powhattan Road to where it intersects the northern boundary of Tax Parcel 17K07004A thence with the northen and western line of Tax Parcel 17K07004A to the southeastern corner of Tax Parcel 17K07004A. Thence leaving said point traveling in a northeasterly direction to the northeastern point of Tax Parcel 17K07005A. Thence along a meandering line encompassing Tax Parcels 17K07005B, 17K07195 and 17K08015M to the western R/W of Fire Dept Road thence along the western R/W line of Fire Dept Road to where it intersects the northern boundary of Tax Parcel 17K07013M. Thence along the northern boundary of said parcel to the south eastern corner of Tax Parcel 17K07013M thence along a meandering line encompassing Tax Parcels 17K0714, 17099030F, 17K07016A, 17K07016C, 17K07016F, 17K07016G, 17J06016, 17K07015F, 17K07017A, 17K08024 to the southern R/W of Jones Road thence along the southern right of way of said road to the northeastern corner of Tax Parcel 17K08026A thence along a meandering line encompassing Tax Parcels 17K08026A thence along a meandering line encompassing Tax Parcels 17K08026A, 17K08026L, 17K08027C, and 17K08026N to the northern right of way of North Carolina Railroad thence along said right of way in an easterly direction to where it intersects the eastern right of way of NCSR 1914 thence along said R/W in a southerly direction to the point and place of beginning.~~

Beginning at a point on the western right-of-way of US Highway 70 By-Pass and the intersection of State Road 1501, Swift Creek Road and continues along the right-of-way of US Highway 70 By-Pass in a northwesterly direction until reaching a point perpendicular to tax parcel 17J07009A; thence northeasterly crossing US Highway 70 By-Pass to a corner of tax parcel 17J07009A; thence along the western boundary of tax parcel 17J07009A in a northeasterly direction to a point on the southern right-of-way of State Road 1913, Wilson's Miils Road; thence continuing across State Road 1913, Wilson's Mills Road to a corner of tax parcel 17J06022K; thence northeasterly along the western boundary of tax parcel 17J06023A, encompassing tax parcel 17J06023A, until said line intersects corner of tax parcel 17J06022R; thence along the western boundary of tax parcels 17J06022R, 17J06022A until the line intersects with a point on the southern right-of-way of the Southern Railroad, continuing in a northeasterly direction across the right-of-way of said railroad, intersecting the corner of tax parcel 17J06022, continuing along the western boundary line of tax parcel 17J06022 until intersecting at the corner of tax parcel 17J06021; thence along the western boundary of tax parcel 17J06021 in a northerly direction to a corner; thence easterly along the boundary of tax parcel 17J06021 to a corner; thence south along the boundary of tax parcel 17J06021 to the intersection corner of tax parcel 17J06017A; thence along the western boundary of parcel 17J06017A to a corner of tax parcel 17J06020E; thence in an easterly direction along the northern boundary of tax parcels 17J06020E, 17J06020A to a corner of tax parcel 17K07005E; thence along

the western boundary of tax parcel 17K07005E in a northerly direction, continuing along the northern boundary of tax parcel 17K07005E until intersecting at a point on the western right-of-way of State Road 1901, Powhatan Road; thence crossing State Road 1901, Powhatan Road to a corner of tax parcel 17K07004; thence in a southeasterly direction along the southern boundary of tax parcel 17K07004; thence continuing along the northern boundary of tax parcels 17K07004A, 17Q99001A, 17K07005D, 17K07005A, 17K07005B, 17K077195, 17K08015M until intersecting at a point on the right-of-way of Frazier Drive; thence along the northern right-of-way of Frazier Drive until intersecting at a point of the western right-of-way of State Road 1908, Fire Department Road; thence along the western right-of-way of State Road 1908, Fire Department Road to a point perpendicular to the northern boundary of tax parcel 17K07013M; thence continuing across State Road 1908, Fire Department Road; thence along the northern boundary of tax parcel 17K07013M in a southeasterly direction to a corner, continuing southwesterly along tax parcel 17K07013M to a corner; thence southeasterly along the easternmost boundary of tax parcel 17K07014 to a corner; thence southwesterly along the southern boundary of tax parcels 17K07014, 17Q99030F to a corner; thence southerly along the eastern boundary of tax parcel 17K07016A to a corner; thence southeasterly along the northern boundary of tax parcel 17K07016C to a corner, continuing along the eastern boundary of tax parcel 17K07016F to a corner, continuing along the northern boundary of tax parcel 17K07016G, to a corner; thence northeasterly along the northern boundary of tax parcel 17J06016 to a corner; thence south along the eastern boundary of tax parcels 17J06016, 17K07017C, 17K07017D to a corner; thence southwesterly along the southern boundary of tax parcel 17K07017D to a corner; thence south along the eastern boundary of tax parcels 17K08025A, 17K08026A, 17K08026L, 17K08027C, 17K08026N to a point on the northern right-of-way of Norfolk Southern Railroad; thence along said right-of-way in a southeasterly direction along the southern boundary line of tax parcels 17K08026, 17K08028A to a corner on said right-of-way of State Road 1914, Bear Farm Road and State Road 1912, Uzzle's Pond Road; thence crossing right-of-way of Norfolk Southern Railroad in a southwesterly direction continuing along the westernmost boundary of tax parcels 17K08028A, 17K08047 to a point on the southern right-of-way of US Highway 70 By-Pass; thence along the southern right-of-way of US Highway 70 By-Pass in a northwesterly direction along the boundary and right-of-way of tax parcels 17K08048C, 17K08048E, 17K08048D, 17K08048G, 17K08048, 17K08043G, 17K08044, 17K08043M, 17K08043I, 17K08043K, 17K08043H, 17K08029, 17K08030A to a corner on said right-of-way; thence in a westerly direction along the southern boundary of tax parcel 17K08031E; thence along the eastern boundary of tax parcel 17K08005; thence along the southern boundary of tax parcels 17J07015, 17J07014A to a point on the southern right-of-way of Jones Court; thence southwesterly along the northern boundary of tax parcel 17J07016 to a point on the eastern right-of-way of State Road 1501, Swift Creek Road; thence southwesterly along the eastern right-of-way of State Road 1501, Swift Creek Road to a corner perpendicular to tax parcel 17J07018B; thence crossing the right-of-way of State Road 1501, Swift Creek Road to a corner,

continuing northerly along the western boundary of tax parcels 17J07018B, 17J07018D, 17J07195, 17J07016A, 17J07019K, 17J07019J, 17J07019I, 17J07019H, 17J07019G, 17J07019F, 17J07019E, 17J07019D; thence along the northern boundary of tax parcels 17J07019C, 17J07019B, 17J07019A, 17J07018O, 17J07018P, 17J07018Q to a point on the northern right-of-way of State Road 1501, Swift Creek Road; thence in a northeasterly direction along the western right-of-way of State Road 1501, Swift Creek Road to the point of beginning at a point on the southern right-of-way of US Highway 70 By-Pass and State Road 1501, Swift Creek Road."

Section 2. This act becomes effective August 2, 1996.

Attachment # 1

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, August 19, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **1065** Amend N.C. Law

Draft Number:	PCSX2809
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: SB 1065

Attachment # 1

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John H. Kerr, III, Co-Chair
David W. Hoyle, Co-Chair

Tuesday, August 19, 1997

SENATOR JOHN KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **590** Wilson's Mills Charter.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: HB 590 8 18